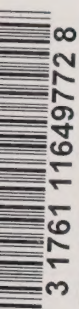


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Hearings. v. 7. January 1967.



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**ROYAL COMMISSION**  
**INQUIRY INTO LABOUR DISPUTES**

563c

HEARINGS HELD AT

**VOL. NO.**

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**DATE**

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Toronto, Ontario

IN THE MATTER OF The Public  
Inquiries Act, R.S.O. 1960,  
Ch. 323

- and -

IN THE MATTER OF an Inquiry  
Into Labour Disputes

BEFORE: The Honourable Ivan  
C. Rand, Commissioner,  
at 123 Edward Street,  
Toronto, Ontario, on  
Monday, January 23rd,  
1967

E. Marshall Pollock

Counsel to the Commission

APPEARANCE:

Provincial Building & Construction Trades Council

J.K. Martin

President

H. Kobryn

Secretary-Treasurer

S. Simpson

Counsel

A. Main

General Manager,  
Toronto & District  
Trades Council

Nethercut & Young Limited, Official Reporters, 48 York  
Street, Toronto, Ontario. Per F.J. Nethercut and  
R.J. Young.







Toronto, Ontario  
Monday, January  
3rd, 1967

---At 10:00 a.m., the Hearing commenced.

MR. POLLOCK: The Provincial Building & Construction Trades Council of Ontario, Kenneth Martin, President, Henry Kobryn, Secretary-Treasurer and Sam Simpson, Counsel and Mr. Simpson, I understand you are going to present the brief this morning.

MR. SIMPSON: Yes, I am.

MR. POLLOCK: At the outset, might I say that the Commissioner and I have read the brief. It is rather lengthy and a very fully prepared document. We are prepared to hear your submissions on it. We don't want to in any way restrict the manner of your presentation than to tell you we have read it and I think we can deal with it in an orderly manner. Would you prefer if we would restrict our questions until you have completed your presentation, or do you want us to stop you in the middle and present our questions then?

MR. SIMPSON: I am going to present a summary of the brief, you could almost describe it as a brief of a brief, a bikini kind of brief, so that I don't think it will take very long and then I just want to raise a few general questions and then, perhaps we could throw ourselves open to questioning.

First, just dealing with the General Considerations which are contained in the brief, number 1 is that strikes and picketing are a necessary and legitimate element of free collective bargaining as the







1 institution for determining conditions of employment and  
2 this institution is the basis of legislative labour policy

3 (2) The Courts have viewed strikes and  
4 picketing as something anomalous, even socially evil, and  
5 to be prohibited except within very narrow limitations.  
6 Since they have provided no alternative mechanism for set-  
7 tling the legitimate disputes which give rise to strikes  
8 and picketing, they unfairly deprive the unions of their  
9 economic weapons and return the issue to the unilateral  
10 and arbitrary initiative of the employer.

11 (3) The doctrine which the Courts used to  
12 develop the rules regulating strikes and picketing is drawn  
13 from unrelated private (tort) law contexts. It is our  
14 submission that these are inappropriate for allowing an  
15 intelligent assessment of the competing interests in labour  
16 disputes even if this was what the Court intended.

17 (4) It is necessary, therefore, for the  
18 representative legislatures to lay down rules and bring  
19 them into a more rational relationship with its overall  
20 labour policy. The basic premise should be, that if  
21 union is to be deprived of its economic weapons, a viable  
22 and effective procedure must be furnished allowing bilat-  
23 eral settlement of the dispute.

24 (5) The construction industry has certain  
25 characteristics in its labour relations structure which  
26 necessitate somewhat different rules in this area, as in  
27 the case of certification procedures now found presently  
28 in the Act.

29 Then we go on to deal with specific types  
30 of situations and recommendations. First dealing with







1 recognition picketing:

2 At present all picketing for recognition by  
3 a union which has signed a majority of the employees is  
4 illegal. This is judge-made law. Particularly in construc-  
5 tion, the certification procedures are too slow and discrim-  
6 inatory discharges too hard to detect and, thus the Board  
7 is not an effective alternative. Hence, it should be made  
8 an unfair labour practice for an employer to refuse to  
9 recognize a majority union and made legal for the latter  
10 to strike and picket if they are not recognized.

11 Secondly, organizational picketing. As above,  
12 this is now illegal per se, a result much different from  
13 the very sophisticated legal regime in the United States.  
14 It is our submission that the law here should be changed  
15 to make legal (i) picketing to remedy unfair labour practices,  
16 (ii) area standards picketing, (iii) consumer-directed  
17 picketing, and (iv) picketing for a short time during an  
18 expedited election process.

19 MR. POLLOCK: May I have those again, please?

20 MR. SIMPSON: (i) picketing to remedy un-  
21 fair labour practices, (ii) area standards picketing, (iii)  
22 consumer --

23 THE COMMISSIONER: Are these specific?

24 MR. SIMPSON: They are contained in the brief.

25 THE COMMISSIONER: You might give us a copy  
26 of that summary.

27 MR. SIMPSON: I can do that, sir.

28 It is found just on the bottom of page 2  
29 of my copy. I don't know what it will be on yours.

30 Now, then we go on to talk about collective





1 agreements and grievance strikes and picketing. At present  
2 a strike, or a threat to strike, during the term of a  
3 collective agreement is illegal by statute and is ground  
4 for suit by a third party. Probably the court would find  
5 even consumer-directed picketing to enforce a grievance  
6 also illegal. Arbitration is not an effective substitute  
7 because it may not reach all disputes, as technological  
8 change, for example, and (ii) because, especially in the  
9 construction industry, it is too slow to be effective.  
10 Hence the statute should be changed to take out the compul-  
11 sory no-strike clause and leave this to free negotiation  
12 or compulsory arbitration should be provided for technolog-  
13 ical changes not covered by the agreement. All arbitration  
14 should be expedited in the construction industry.

15               Negotiation Strikes and Picketing - at  
16 present all union pressures during conciliation are illegal  
17 and no strike is legal before all procedural requirements  
18 under the Act are fulfilled to the letter. Even if a strike  
19 is legal, secondary pressures in aid of it are per se  
20 illegal. The legislation should be changed to specify  
21 what is the legal effect of union activities and anything  
22 not forbidden by the Legislature must be permitted by  
23 Courts. Violence and intimidation on the picket line must  
24 of course, remain illegal (but fairer procedures, discusse  
25 later, must be devised to ensure the accuracy of this  
26 finding). To help prevent mass picketing though, consider-  
27 ation should be given to forbidding the hiring of striker  
28 replacements. As a bare minimum all replacements must be  
29 temporary and the striker must always have a preferential  
30 right to his job back, with pensions, seniority, etc. when







1 he agrees to end the strike. If the employer is allowed  
2 to hire even temporary replacements to help him, then union  
3 secondary pressures, peacefully appealing to their support-  
4 ers, as employees or consumers, should also be permitted.  
5 If this is not permitted, a very narrow definition of  
6 secondary pressure must be drawn by the Legislature to take  
7 account of the realities of the situation. In particular,  
8 all consumer-directed product picketing or boycotts must  
9 be permitted in order to protect the interest of consumers  
10 in the free communication to them of truthful information  
11 about the products they are buying, to give them freedom  
12 of choice.

13 11. Remedial Procedure for Enforcing these Rules

14 It is our submission that the defects in  
15 the present procedure of the interim labour injunction  
16 are (i) it has transformed private tort law rules for  
17 avoiding damages into mandatory rules sanctioned by crim-  
18 inal penalties, and (ii) it has sacrificed completely the  
19 employees' interest in an accurate fact-finding and fair  
20 law-applying process to the employer's interest in an im-  
21 mediate remedy.

22 (2) The interim labour injunction in its  
23 present form must be completely abolished in a "labour  
24 dispute", the latter being defined at least as widely as in  
25 Norris-LaGuardia. In its place (a) ex parte orders should  
26 be permitted only in case of violence, only at the suit  
27 of a public official, should require as a condition prece-  
28 dent an affidavit from the chief of police that he cannot  
29 control the situation, and only last for a short time; (b)  
30 All other mandatory interim orders in labour disputes must







1 be brought in front of the Labour Relations Board and in-  
2 volve the presentation of oral evidence in "open court". A  
3 suitable procedure is suggested for ensuring the protection  
4 of the employer's interest in a speedy determination of  
5 his claim.

6 Now, if I may, just some general remarks.  
7 The brief is some 52 pages in length but, I think, the  
8 general theme running through it is to be found in the  
9 passage of the late Mr. Justice Frankfurter of the United  
10 States Supreme Court and the second paragraph on page 8,  
11 the second sentence in that paragraph, where he says:

12 "Once we recognize that the right of  
13 combination by workers is in itself a  
14 corollary to the dogma of free competi-  
15 tion, as a means of equalizing the  
16 factors that determine bargaining power,  
17 the consequences of making the power of  
18 union effective will be seen in truer  
19 perspective. Undoubtedly, hardships  
20 and even cruelties are involved in  
21 this phase, as in other aspects, of  
22 our competitive system. Wise states-  
23 manship here enters to determine at  
24 precisely what points the cost of  
25 competition is too great. Primarily  
26 this is the task of legislatures.

27 Only within very narrow limits is it  
28 the function of courts to apply their  
29 own notions of policy. And it is  
30 immaterial whether this is done by





1 judges with the frank avowal that they  
2 are also organs of policy or under the  
3 subtler guise of enforcing constitutional  
4 coercions."

5 For which I could, in this province, substitute common law  
6 doctrine.

7 "To count the cost of union weapons is  
8 to count the cost of free competition in  
9 industrial controversy. Without breeding  
10 other ills and, above all, without hurting  
11 the prestige of law, the cost is not to  
12 be diminished by curtailing in the name  
13 of law the most effective union tactics."

14 I think it is suggested there, that the question of restric-  
15 tion on the economic powers of both employers and employees  
16 is a political question and should be decided primarily by  
17 the legislature.

18 The other general remark, sir, is that  
19 represent trade unions which are in the construction indus-  
20 try and it is our submission that we are in a little dif-  
21 ferent situation than most other trade unions in this  
22 province. That difference has been recognized in the Labour  
23 Relations Act with respect to certification and conciliation  
24 and the Goldenberg Report, which resulted in a change of  
25 the legislation, described the conditions probably much  
26 better than I could ever describe them, that existed in  
27 industry. My information now is that the conditions in our  
28 industry have not materially changed since this report;  
29 they are exactly the same. So that we are asking this  
30 Commission to consider our special situation and, if







1 recommendations are made that allowance be given to us as  
2 being in a special situation and therefore, requiring perhaps  
3 special treatment.

4 THE COMMISSIONER: You refer to the specific  
5 conditions under which you feel you labour and what do you  
6 suggest for their amelioration.

7 MR. SIMPSON: I think the main areas of our  
8 concern are in the areas of organization. Our chief problem  
9 is one of organization. The residential construction in-  
10 dustry is still largely an unorganized industry.

11 THE COMMISSIONER: What do you mean by  
12 that, unorganized? Do you mean non-unionized?

13 MR. SIMPSON: Non-unionized. Now, the  
14 problems which prevent us from organization are the facts  
15 which actually exist in the industry, which were described  
16 in the Goldenberg Commission, the peculiar relationship  
17 between employer and employee and the fact that it is of a  
18 very temporary nature, the fact that projects are of a  
19 short duration.

20 THE COMMISSIONER: But you do have a certain  
21 system of craft unionism and craft arrangements with  
22 tractors, don't you?

23 MR. SIMPSON: In commercial construction  
24 we have a high degree of organization among successful,  
25 commercial contractors. When I say "successful", I mean  
26 fairly large contractors - people who employ large numbers  
27 of persons who engage in fairly large projects which are  
28 not of a short duration and these projects take them all  
29 over the Province of Ontario and outside the country.

30 THE COMMISSIONER: Including, say, sub-







1 contracting?

2 MR. SIMPSON: Yes, but our main area of  
3 concern, sir, is in the area of organization. The conditions  
4 that existed when Mr. Goldenberg studied the conditions,  
5 are still the same. They have not materially changed. In  
6 fact the changes in the Act to speed up the certification  
7 procedures have not helped us to organize residential  
8 construction any more effectively than we were able to  
9 before.

10 THE COMMISSIONER: To what do you attribute  
11 that?

12 MR. SIMPSON: There are many causes but the  
13 main causes are still the same as the causes that were set  
14 out in the Goldenberg Report.

15 THE COMMISSIONER: Just indicate them  
16 briefly.

17 MR. SIMPSON: I had hoped to have an add-  
18 enda to this brief which would describe the kind of thing  
19 that happen on the ground, as it were.. To give you an  
20 example, the residential contractor who builds apartment  
21 buildings will put up one building, incorporate a corpora-  
22 tion under the name of 2500 Main Street West Limited. He  
23 will be the employer. He will sub-contract out all that  
24 work. We may attempt to organize him.

25 MR. POLLOCK: He will be the employer and  
26 then he sub-contracts all the work -- he will be the owner

27 MR. SIMPSON: He will be the owner and also  
28 the employer. He may set up another company for tax pur-  
29 poses to be the owner of the building.

30 MR. POLLOCK: He sub-contracts all the work





1 then he hasn't got any employees working for him?

2 MR. SIMPSON: That is right. When I say  
3 sub-contracting out the work, Mr. Pollock, I might say  
4 that is a term that I use, but in effect, he may employ  
5 one person to be his general contractor. He has got no  
6 experience in building. He is just in there to put up an  
7 apartment building so he can make some money. He is not  
8 interested in working conditions or anything else.

9 THE COMMISSIONER: Is the general contrac-  
10 tor, in your suggestion, employing sub-contractors for the  
11 work?

12 MR. SIMPSON: He would employ someone to  
13 do the work that a general contractor would normally do,  
14 but this person is his employee. Now, we try to organize  
15 this person and eventually, let us say, we are successful,  
16 usually our certificate is given to us after the apartment  
17 building has been completed, and this man never uses that  
18 corporation to build another building. That is it, that  
19 is the end of the job. The project is over. Now, we may  
20 make an application in a similar situation again and delay  
21 is the primary weapon in the employer's hands. For example  
22 you apply for carpenters and you say this man is employing  
23 12 carpenters as a general contractor. So, you ask to have  
24 them carved out of a larger unit. The employer then says,  
25 "No, there are not 12 carpenters. I have 16 or 17 carpen-  
26 ters". The Board then has to send out a special examiner  
27 to determine the composition of the bargaining unit. The  
28 special examiner will then examine, and the parties will  
29 be given an opportunity to ask questions and cross-examine  
30 and to lead their own evidence. They will examine these







1 16 persons to find out exactly what they are, to see if  
2 they are carpenters. All this takes time, and by the time  
3 the application has been processed again, we have gone by  
4 another 6 or 7 months.

5 I can give you another example where you  
6 have a firm, in effect, changing its status. I had one  
7 situation before the Board where a masonry contractor, who  
8 was a father-in-law, in effect, took over the business of  
9 his sons-in-law. His sons-in-law were union, so, in effect,  
10 they transferred practically all their business to their  
11 father-in-law. Under the new section in the Act, the  
12 successors section, we made an application for declaration  
13 and we got it but it took us a year and a half to get the  
14 declaration. This did not assist us any in organizing the  
15 union. There are hundreds and hundreds of situations which  
16 go on like that.

17 I hope I will be filing with you -- and I  
18 have asked my people to prepare such a list -- a list of  
19 factual situations which arise.

20 THE COMMISSIONER: We would like to have  
21 that, as many as you can get, to see how these things work.  
22 Now, what is your suggestion to cure the situation?

23 MR. SIMPSON: I think, because of the  
24 peculiar circumstances we have suggested in our brief that  
25 we be given the right to peacefully picket. To organize  
26 these kind of employers, we have asked for this on the  
27 basis of organization and recognition picketing.

28 THE COMMISSIONER: When you say "we", who  
29 do you mean?

30 MR. SIMPSON: The Provincial Council.





1 MR. POLLOCK: Stick to the recognition  
2 picketing for the moment, which is the simpler of the two,  
3 in the sense that it involves only the one situation.

4 MR. SIMPSON: Yes, the organization includes  
5 that.

6 MR. POLLOCK: Yes. You are restricting  
7 your discussion now to the residential apartment construc-  
8 tion or housing development.

9 MR. SIMPSON: What we say here is that, in  
10 effect, we should be given the right to peacefully picket  
11 a job where we have signed a majority of the persons work-  
12 ing for the general contractor. In many of these situations  
13 these persons are only employed by the general contractor  
14 for short durations. They may never come across each other  
15 again. So that, a union may be successful in organizing the  
16 unit, but when the application is made, the employees often  
17 become fearful of their jobs and will sign a counter-petition  
18 for example. In other words, it is easy for the employer  
19 to make it difficult to hold onto a majority once you have  
20 organized it in construction. He can tell them that if  
21 these people are going to get a union, he will not be able  
22 to complete the project and they are going to be out of work

23 MR. POLLOCK: Which, according to your  
24 brief, is in some cases true. That the only way he can  
25 carry out that work is if he pays sub-union wages.

26 MR. SIMPSON: That is right. He can also  
27 -- and this happens very frequently -- lay off a person  
28 the next day. Now, that person knows he is laid off because  
29 he has joined the union and he knows his employer knows  
30 that. It is very little answer to say that this man could







1 complain under section 65 of the Labour Relations Act and  
2 he can have his job reinstated and he can get loss of wages  
3 awarded to him. Once that person is laid off or discrimina-  
4 ted against, he does not want to go back to his employer.  
5 He does not want reinstatement either. He just wants an-  
6 other job. So, it is very easy ---

7 THE COMMISSIONER: Are these more or less  
8 skilled workmen?

9 MR. SIMPSON: Yes.

10 THE COMMISSIONER: Have they a craft union?

11 MR. SIMPSON: Some of them have been union  
12 members in the past. They may have ceased to be active  
13 members of the union, and when an application is made they  
14 have a change of heart and sign the application. Many  
15 others may never have been members of a union. Many of them  
16 are of European extraction who do not speak English and  
17 have just arrived in the country and do have the skills  
18 but have never become members of any craft union.

19 THE COMMISSIONER: Then, the effect of it  
20 is the inability to form a union apart from any particular  
21 contract, to establish a union that is more or less perman-  
22 ent? Some of these crafts have that haven't they?

23 MR. SIMPSON: As we said in the brief,  
24 construction is peculiar in that the closest relationship  
25 is between an employee and his union, not between employees  
26 and a particular employer.

27 THE COMMISSIONER: That is so. That is  
28 what I say, you have not got that unionization. Take your  
29 painters or carpenters ---

30 MR. SIMPSON: You mean are there any





1 particular craft unions that have a high degree of organiza-  
2 tion where their skills are such that -- I would say the  
3 ones that come to mind are the people who put up or install  
4 elevators in a building. There is an extremely high degree  
5 of unionization there, almost 90 per cent. Structural steel,  
6 I understand, is very high too.

7 THE COMMISSIONER: Take carpenters, what  
8 about them?

9 MR. SIMPSON: I act for the carpenters' union  
10 in Hamilton and my experience would have to be related to  
11 them. They are not as highly unionized as we would like  
12 them to be.

13 THE COMMISSIONER: What about painters?

14 MR. SIMPSON: Oh, no, sir. I would say less.  
15 I would say a less degree of organization. I may be correc-  
16 ted, because the painters' union is part of the Council,  
17 but I would say there is less unionization. I think, as  
18 you take a less skilled work, you find it is more difficult  
19 to organize them in construction, because usually that  
20 worker comes from Europe, is unskilled and is not familiar  
21 with the English language and will take a semi-skilled or  
22 unskilled job because he cannot find another job in the  
23 labour market. This was described in the Goldenberg Commis-  
24 sion Report where one of the witnesses said he would ask  
25 some of these people how long they worked, for example, and  
26 they would say "We work as long as it is light. We start  
27 when the sun comes up and we leave when the sun goes down".  
28 Those are the working conditions. These people have no other  
29 choice.

30 THE COMMISSIONER: Of course, that depends







1 upon the presence of a surplus labour body which can be  
2 drawn upon by a contractor for a particular job.

3 MR. SIMPSON: Well, to some extent it does,  
4 but I think this kind of labour market certainly has not  
5 diminished since the Goldenberg Report, and is continually  
6 being augmented every year, as people are being brought into  
7 this country.

8 THE COMMISSIONER: I thought they were being  
9 brought in because they were skilled.

10 MR. POLLOCK: The Construction Association  
11 seems to think there is a shortage of skilled construction  
12 workers.

13 MR. SIMPSON: What kind? Structural steel?  
14 Perhaps there are.

15 THE COMMISSIONER: A sort of generality of  
16 skill is what they want. That was the test for their  
17 admission.

18 MR. SIMPSON: Maybe, in commercial construc-  
19 tion there is a shortage of highly skilled personnel. I  
20 might go along with that. However, the residential con-  
21 struction, I don't think the same skills may be required.

22 THE COMMISSIONER: That means, in many cases  
23 then, that there is liable to be very sloppy work.

24 MR. SIMPSON: There is in residential work,  
25 yes. I think we only have to witness the buildings that  
26 are going up to almost take judicial notice of the fact they  
27 are not as well constructed as we would like them to be,  
28 especially in apartment buildings.

29 MR. POLLOCK: You say they are not as  
30 highly unionized as you would like to see: they are,





1 obviously then, as highly unionized as they like to see.

2 MR. SIMPSON: We don't think the employees,  
3 for example, really do have an effective choice. It is our  
4 submission that because of the conditions that exist in the  
5 industry, these people are exploited and taken advantage of  
6 by unscrupulous contractors. Let us face it, they are not  
7 in the building business. They are in there to put up a  
8 building, make money and get out.

9 MR. POLLOCK: What are the people in the  
10 building business in there for?

11 MR. SIMPSON: These are the people we  
12 usually have a good association with.

13 MR. POLLOCK: But these are the people who  
14 usually move on to another building.

15 MR. SIMPSON: No, they are there to stay  
16 around for a long time. They are concerned about their  
17 general reputation in the building community. They have  
18 to stand or fall by the buildings they put up.

19 MR. POLLOCK: The choice you give to the  
20 unorganized worker is that he can join a union, require a  
21 higher rate of pay, but not get a job because there will  
22 not be enough available jobs for him at this higher rate  
23 of union scale. That is what your brief says.

24 MR. SIMPSON: No, I don't think it says  
25 that. I think you are assuming that if the wages go up  
26 and there is a higher degree of unionization, there will  
27 be fewer jobs. I don't think that is a correct assumption.  
28 Certainly, it is one that was not intended in this brief.  
29 The Goldenberg Commission found that the chief competition  
30 that went on between building contractors was on the basis







1 of wages and we say in our brief -- perhaps it might be a  
2 little more appropriate at this time, to quote what the  
3 Goldenberg Commission says. It is on page 18. It says:

4 "This method of operation has convinced  
5 most firms in the industry that uniform  
6 wage rates extending throughout the  
7 local market are decidedly advantageous."

8 which the contractors -- when I say "contractors"

9 I am talking about responsible contractors -- like.

10 "Each contractor can submit only one  
11 bid, and is presumably ignorant of the  
12 bid prices submitted by others. A  
13 major factor in the cost of each compet-  
14 ing contractor is the total amount of wages  
15 which he must pay. If all contractors  
16 know that their competitors must pay  
17 an identical wage rate, this removes  
18 one of the largest items from the sphere  
19 of competition, and does away with a  
20 major source of worry. In the absence  
21 of union interference in the labour  
22 market there would be little reason to  
23 expect that a single wage rate for a  
24 particular skill would emerge or prevail  
25 for any period of time. Consequently,  
26 contractor competition based partly on  
27 wage differentials would be more intense  
28 and more unstable, to the detriment of  
29 both the employers and the workers.

30 "Without a uniform rate there might be





a continuous pressure on the wage scale  
Successful bidders would be the contractors who had best succeeded in reducing wage rates and other economic conditions of employment below those of their competitors. Actually, there appears to be a situation in construction in which the technical organization of the competitive market itself is partly responsible for exerting a downward pressure on the bids submitted by competing contractors. Many of the devices developed by contractors to regulate the market and avoid instability seem to be related to this type of pressure. Ultimately also, the contingencies of incorrect estimating, unexpected delays because of climatic conditions, unforeseen difficulties in construction, or limited cash resources might force a successful bidder to attempt wage reduction. The building trades unions are one agency capable of enforcing minimum equal standards in wage rates and other conditions of employment in a competitive area. (Goldenberg Report, at p.6)."

MR. POLLOCK: Of course, that is not an extract from the Goldenberg Report: That is a recommendation or observation. It was a quotation from an article







1 by Bertram and Maisel on the American situation which is  
2 used as a type of demonstration in that report of some of  
3 the peculiar natures of the construction industry.

4 MR. SIMPSON: It was cited in the Report  
5 and I take it that the Commissioner must have considered it  
6 of some significance to have set it out.

7 MR. POLLOCK: It is significant in the  
8 chapter that is headed Economic Features of the Construction  
9 Industry in which he borrows heavily, in some cases, from  
10 foreign sources. But let me refer you to your own brief  
11 on page 20, in answer to my question where you say:

12 "Why can't the union member protect  
13 his interest in his own economic well-  
14 being by asking the aid of sympathizers  
15 freely to help him bring economic  
16 pressure on the unorganized hold-outs  
17 who threaten union standards in the  
18 industry. As the law stands now, the  
19 non-union employee is given the power  
20 of peacefully forcing his union counter-  
21 part to choose between less work at the  
22 union scale or more work at the non-union  
23 scale. The union member is prevented  
24 from peacefully imposing the same choice  
25 on his non-union counterpart, between  
26 working at the union-negotiated standard  
27 or not working at his own standard."

28 MR. SIMPSON: This happens where you have  
29 cut-throat wage competition.

30 THE COMMISSIONER: Where you have what?





1 MR. SIMPSON: Where you have cut-throat  
2 wage competition.

3 THE COMMISSIONER: I thought that was the  
4 basis of this first quotation you made from Mr. Justice  
5 Frankfurter, the dogma of free competition and from that  
6 all these other rights of labour flow.

7 MR. SIMPSON: It is, but then he goes on  
8 to say it remains a question as to what economic powers  
9 which you have given the union by the very fact that you  
10 have permitted workers to combine, are going to be regulated  
11 and which are not going to be regulated. All I am saying  
12 in the context of the passage that Mr. Pollock just read,  
13 is that the conditions which you describe exist because of  
14 the fact there is not a high degree of organization. We  
15 don't say if there is a high degree of organization there  
16 will be less work; we say there could be less work for  
17 union people at union wages if we have a lot of other con-  
18 tractors who are offering in the same market, lower construc-  
19 tion rates primarily because they are willing to cut wages  
20 and working conditions.

21 MR. POLLOCK: It strikes me that one of the  
22 difficulties that you face in the organization is that you  
23 do not have a very attractive product to sell to the indi-  
24 vidual who is at a level where, if he joins a union or wants  
25 to have union rates, he doesn't get a job. And even where  
26 there is a collective agreement in force, as is at least  
27 the evidence of the Brandon Hall group to Mr. Goldenberg,  
28 very many employees with the mistaken view, he points  
29 out, that such an arrangement leads to permanent or more  
30 stable employment, privately agree with their employers to







1 accept wages lower than those called for in the fair wage  
2 schedules or the collective agreements, and this, apparently  
3 had become a common practice.

4 MR. SIMPSON: We don't even get a chance to  
5 sell our product.

6 THE COMMISSIONER: To do what?

7 MR. SIMPSON: We don't even get a chance to  
8 sell our product. That is the main pitch of our brief.  
9 organizing problems are such that - well, Mr. Pollock said  
10 you are not selling an attractive product, you are offering  
11 these people less work at higher wages. I am suggesting  
12 that is wrong. We do not even get a chance to sell the  
13 product; we are cut off before it is too late because of the  
14 nature of the industry itself.

15 There are many reasons why it is difficult  
16 for us to organize, Mr. Pollock, but one of them is not  
17 because we are selling a less attractive product; it's  
18 because we don't get a chance to attempt to sell the  
19 product. There are too many factors working against our  
20 advertising of this product.

21 THE COMMISSIONER: As you stated, isn't it  
22 a question of the cost that you are so-called selling for?  
23 They are selling for less, you are selling for more. What  
24 you want is regulation in spite of the fact that you base  
25 it all on competition.

26 MR. SIMPSON: Some of the people from the  
27 Council, Mr. Kobryn and Mr. Martin, I think Mr. Kobryn  
28 would like to answer that question.

29 MR. KOBRYN: We say, where there is a  
30 degree of organization, I will refer to my own area,





1 Windsor, where housing, apartments, general construction,  
2 commercial construction are all covered by the one agree-  
3 ment signed with the Windsor Construction Association and,  
4 consequently, the level of organization in the area is  
5 almost 95 per cent, competition is equal amongst all  
6 employers and there is no problem with the wage rates.  
7 In effect, they are turning out a better product than  
8 the non-union house builder or non-union apartment builder  
9 because we are getting qualified tradesmen to put up these  
10 buildings.

11 THE COMMISSIONER: You are getting 95  
12 per cent of the work.

13 MR. KOBRYN: That is right, sir.

14 THE COMMISSIONER: So the complaint is  
15 related to 5 per cent of the work?

16 MR. KOBRYN: Now this is only the Windsor  
17 area. Outside of the Windsor area the situation is not  
18 the same.

19 MR. POLLOCK: What is the magic in Windsor?

20 MR. KOBRYN: Well, we organized long  
21 before everybody started to holler "police" every time  
22 we went to organize. We went to the Labour Relations  
23 Board and said we were illegally doing various things and  
24 where the employer felt that possibly it would be better  
25 to be organized and keep a competitive wage and know that  
26 his competitor had to pay the same wage when he was in the  
27 same business. Now it is getting so that the courts  
28 have stepped into the picture and the moment you go to  
29 organize an employer and talk to his employees, first  
30 thing you know, you are told to get off the project or







1 they will go to the courts or if you disagree with this  
2 the first thing you know you have got an injunction  
3 issued against you. So the law is against you about  
4 100 to 1.

5 THE COMMISSIONER: What are the condi-  
6 tions outside of Windsor? 5 per cent, I should say, is  
7 something that you must have to endure as a nuisance.

8 MR. KOBRYN: Outside of Windsor, I  
9 would say most housing and apartment buildings are non-  
10 union.

11 THE COMMISSIONER: What about Toronto,  
12 here?

13 MR. KOBRYN: That is the story in Toronto.

14 THE COMMISSIONER: Is there about 50  
15 per cent organized?

16 MR. KOBRYN: In the commercial or indus-  
17 trial field, I would say they are highly organized but  
18 in the housing they are not. They might have made some  
19 progress but they are still highly unorganized.

20 THE COMMISSIONER: Then you say the real  
21 villain is the fly-by-night contractor?

22 MR. KOBRYN: Many of them are the fly-  
23 by-night contractors, the fellow who comes in and sets  
24 up a corporation for one job only, hires the minimum  
25 number of people, sub-contracts to various people, even  
26 goes so far as to sub-contract to individuals who do not  
27 have to supply materials - just some labour.

28 MR. POLLOCK: It is the sub-contractors  
29 who have a continuing business relationship with their  
30 people that they use, don't they?





1 MR. SIMPSON: Yes, but most of them, as  
2 we have said, are more like employees than sub-contractors.  
3 Sometimes it is inaccurate to describe them as a sub-  
4 contractor: they are more accurately described as em-  
5 ployees.

6 MR. POLLOCK: Let me pursue that. If I  
7 am the owner of the site and I want to have a building  
8 built, a residential building and I come to you and I  
9 say, "Mr. Simpson, you are in the plastering business,  
10 I need some plasterers" do I say, "Who are they, do I go  
11 and hire them?", or do I say "You look after that, you  
12 look after the plastering, give me a quote on how much  
13 it is going to cost to get the plastering done". Isn't  
14 that what happens?

15 MR. SIMPSON: Yes.

16 MR. POLLOCK: That is a sub-contracting  
17 situation.

18 MR. SIMPSON: But in the housing situa-  
19 tion many of the sub-contract jobs are small jobs and  
20 one man can do the job or two men can do the job. So  
21 it is very artificial to describe them as a sub-  
22 contractor: They are employees of the general contractor  
23 and he hires them to do the plastering work. They could  
24 be two brothers in the plastering business.

25 MR. POLLOCK: By the technical, legal  
26 definition of independent contractor as opposed to an  
27 employee, they are independent contractors, they bid on  
28 the contract and say "I will do the whole thing for so  
29 much time". The employer or owner doesn't know how to  
30 plaster. He can't say, "Take the plaster in your left







1 hand and put it on with the right hand", can he?

2 MR. SIMPSON: No, he doesn't. In effect,  
3 he sub-contracts to plasterers, if you want to use the  
4 technical term.

5 MR. MARTIN: I think there is a factor  
6 here that comes into it. Where you are in the commercial  
7 field the contract will go out and early in the construc-  
8 tion, probably prior to even the ground being removed,  
9 the excavation, it is known who is going to do the  
10 various aspects of the construction. Now, in the non-  
11 union field, this is no problem to us; we can organize  
12 here and have done so. When you get into the non-union  
13 field, especially in the apartment and some of the small  
14 commercial work, the contractor comes in --

15 MR. POLLOCK: You meant, in the first  
16 case, the union field being organized?

17 MR. MARTIN: Yes, we know who the owner  
18 is, we can check his company out and we can find out the  
19 man's legitimate business and his legitimate business is  
20 in the contracting business and has been so. We get a  
21 chap comes in, he may have 1080 Dundas Street, as Mr.  
22 Simpson indicated, and this is all the company name is.  
23 He has never been in construction before, he is represent-  
24 ing money from some source across the province, he goes  
25 into business. We go after the man to try to organize  
26 him. The minute that we would get a group of those  
27 fellows, enough that we could make an application for  
28 certification, chances are the company name has been  
29 changed, not the 1080, but 1081, or he may, if he feels  
30 we have an application going in, instead of doing the





1 work that he was going to do, in other words, he will  
2 hire a superintendent who will hire men. Basically, the  
3 superintendent is the sub-contractor doing the general  
4 contract portion of the building but the man is nothing  
5 but a front for the owner. Say he has 10 men on the job,  
6 we get 8 of those men signed up, we make an application  
7 for certification. Then we find that he is no longer  
8 going to do the work and he will bring someone in with  
9 a fictitious name of 1012 Dundas Street and turn over  
10 the work to him. In other words, he has gone out of  
11 business already, he is not going to be a contractor.  
12 So now we are dealing with another person. When we go  
13 after the same employees to sign up again, certainly  
14 they are afraid for their jobs, they have been coerced,  
15 this is obvious, the contractor who was doing the work  
16 they no longer work for, they get a cheque from 1080  
17 Dundas Street this week, next week the work has been  
18 given to somebody else and they get a cheque from a  
19 different company. They have changed employers without  
20 their knowledge. We have made an application for an  
21 employer who is no longer in business.

22 As the work proceeds in this manner, each  
23 part of the building can be carried out in the same  
24 manner. Now, it is not that we are going to give less  
25 work to these men who have come in. The work is there  
26 but it is determining who is going to do it and who they  
27 are working for.

28 THE COMMISSIONER: Don't you assume that  
29 there are more men available to work than there is demand  
30 for work?







1 MR. MARTIN: This varies with the time of  
2 year.

3 THE COMMISSIONER: I was wondering, now,  
4 suppose all these men do join their union, what is the  
5 order in which they are called? Is the senior man pre-  
6 ferred?

7 MR. MARTIN: This would vary too, sir.

8 THE COMMISSIONER: If the senior man is  
9 preferred, these men are left out in the cold.

10 MR. MARTIN: But this is not the point,  
11 sir. To get the men in, in the first place, to become  
12 union members, the first thing we have got to determine  
13 is that they have made their application and paid,  
14 according to law, their dollar deposit and there has  
15 been a necessary document submitted to the Department  
16 of Labour and we are after a certification for a company  
17 that has gone out of business.

18 THE COMMISSIONER: Never mind the certi-  
19 fication. Let us say, in the organization of a union,  
20 you don't have to have certification to do that in a  
21 craft union?

22 MR. MARTIN: That is correct but we have  
23 got to convince these men that they do belong to some-  
24 thing and that we have got their bargaining rights but  
25 we have nothing to bargain with for them.

26 THE COMMISSIONER: What is the bargaining  
27 cohesive force in craft unions? They get together because  
28 they do the same kind of work and they agree on certain  
29 terms for which they will all work. But if there is a  
30 certain turn in the market - it seems to me what you are





1 complaining about is that these non-union men, at low  
2 wages, are getting jobs that ought to go to the unionized  
3 men at higher wages. I don't criticize that, I am simply  
4 trying to find the facts.

5 MR. KOBRYN: One thing you must realize  
6 in the construction industry there isn't such a thing as  
7 seniority.

8 THE COMMISSIONER: There is?

9 MR. KOBRYN: There is not, there is no  
10 such thing as seniority among building tradesmen. He is  
11 hired for a particular job and when he completes that  
12 job he is done, he is laid off, he returns back to his  
13 union hall, he puts his name on the unemployed list and  
14 then, when his name comes up again on that unemployed  
15 list in rotation with anyone else, whether the man is a  
16 brand new union man or not --

17 THE COMMISSIONER: That is what I want  
18 to get, you maintain a rotation.

19 MR. KOBRYN: That is right, whether he is  
20 a brand new man or has been in the union for 25 years, he  
21 comes on in rotation and he is sent on wherever the work  
22 is.

23 THE COMMISSIONER: That answers the  
24 question I had.

25 MR. MARTIN: There is still the fact  
26 that the men who had originally joined the union, they  
27 are new men and we have gone out and signed them up, they  
28 have made out their applications with the desire to join  
29 the union. When we are entering into the apartment field  
30 we are still hit with the same thing, that although we







1 have new union men, they are interested in doing the job  
2 of work they were employed to do. All we are trying to  
3 establish for them is that they are working for a  
4 contractor who we wish to sign a contract with, but  
5 the way the set-up is at the present time, we do lose  
6 some of these men because they could have 2 or 3 contrac-  
7 tors on one job or two or three employers without their  
8 willingly changing their employment. The work is there  
9 for them and they want to do it. We want them to do it  
10 as members of our unions, but the employer can be  
11 changed without them knowing it. Their cheques are  
12 changed at the end of the week.

13 THE COMMISSIONER: Do you think that  
14 is done simply to defeat unionization?

15 MR. MARTIN: It certainly goes a long  
16 way, sir, because the men are dissatisfied, especially  
17 because a lot of them are Europeans. Some of them are  
18 our own Canadian chaps who have come in from the smaller  
19 areas to work who have certain skills. It certainly  
20 deters them because they are automatically afraid --  
21 they are into a bigger city for the first time and have  
22 nobody to back them up and their only livelihood is that  
23 job.

24 THE COMMISSIONER: Take this city, and I  
25 don't expect any more than an approximation; what per-  
26 centage of the work in residential building is served  
27 by non-union men?

28 MR. KOBRYN: I am not too sure. Some  
29 unions have made inroads. Some of the craft unions  
30 have made inroads into the residential, but I think the





1 general trades like, possibly carpenters, labourers,  
2 reinforcing-steel men and others who do the general --  
3 not the absolutely highly skilled trades; they are  
4 all skilled, but there is a certain degree -- but a  
5 good percentage of these are still unorganized. One  
6 of the things that happens also in a certification  
7 application is that they will go in and apply for certi-  
8 fication possibly for carpenters or possibly for rein-  
9 forcing-steel men or someone else, and the employer will  
10 say "You say you have got 10 men. I say, in that  
11 category, there are 20 men", because at different times  
12 he may use his carpenters and labourers to do the rein-  
13 forcing steel, and vice versa. He will use all these  
14 people and list them against the certification. This is  
15 how certifications are defeated. Then, even though you  
16 get certified, as the procedure goes under the Act, he  
17 can delay negotiations, and with sufficient enough delay  
18 and everything else, he can complete that portion of the  
19 project if he is a sub-contractor, before an agreement is  
20 signed, and then it is useless to continue.

21 MR. SIMPSON: As far as percentages are  
22 concerned, in the Goldenberg Report, on page 15 there is  
23 a general comment that trade unions have generally been  
24 less successful in organizing workers in residential  
25 building than in commercial. Then it goes on to state  
26 that Windsor is an exception in the whole province.

27 Then, at the top of page 17 it says:

28 "The Trade Contractors Associations  
29 which were formed as a result of the  
30 strike until its members signed collective







1 agreements with the Brandon unions  
2 were far from representing all con-  
3 tractors in each trade. This is  
4 indicated in the brief of the  
5 Toronto & District Trades Council.  
6 It has been submitted the following  
7 estimate as to the degree of organiza-  
8 tion of each of the trades in terms  
9 of the total volume of work performed --"

10 Then it has got carpenters, 25 per cent organized; 75  
11 per cent non-union.

12 All we can say is that a substantial  
13 majority of residential contractors in the Province of  
14 Ontario, with the exception of Windsor, remain unorgan-  
15 ized, because of the conditions which still exist, or had  
16 existed in 1962.

17 THE COMMISSIONER: Now, what did Mr.  
18 Goldenberg recommend as a means of remedying a condition  
19 which was criticized?

20 MR. SIMPSON: He recommended that, for  
21 example, we be given assistance by shortening the  
22 certification procedures, expediting them, and by also  
23 expediting the conciliation procedures. As a result,  
24 sections in the Act were passed, but what we say is,  
25 that even with these new sections which speed up certi-  
26 fication and conciliation, there is still too much delay  
27 and there are still too many obstacles in our way.

28 THE COMMISSIONER: Well, then, what  
29 do you suggest in addition to that?

30 MR. SIMPSON: What we are asking for





1 is the right to peacefully picket for the purposes of  
2 recognition picketing and organization picketing.

3 THE COMMISSIONER: What would be the  
4 result of that?

5 MR. SIMPSON: We believe that we will  
6 have a better opportunity to organize residential  
7 contractors.

8 THE COMMISSIONER: That may be, but  
9 what will be the affect upon the construction unions?

10 MR. SIMPSON: I still think there will  
11 be residential contractors who will be able to carry  
12 on with non-union personnel.

13 THE COMMISSIONER: Yes, but if you take  
14 a small union and maybe 10 men employed on a contract  
15 and they set up a picket line and the whole work stops:  
16 Is that what you have in mind?

17 MR. SIMPSON: In some situations, it  
18 could lead to that.

19 THE COMMISSIONER: Well, what do you  
20 think about that fact in the construction of houses,  
21 say, for which there is a demand bigger than any other  
22 demand at the present moment?

23 MR. SIMPSON: We think, on the question  
24 of balance, we should be able to peacefully picket a  
25 job.

26 THE COMMISSIONER: Do you demand, in  
27 the picketing, that the whole work stop or that your  
28 particular work is stopped?

29 MR. SIMPSON: Well, I think when we  
30 picket, obviously economic pressure is going to be







1 exerted on that employer for that group of employees in  
2 an organizational situation, as a result of other sub-  
3 contractors not completing their work because their  
4 employees refuse to cross the picket line.

5 THE COMMISSIONER: Yes, exactly, but  
6 what happens is this: You have a certain kind of work  
7 to do and that work must be assumed to be essential in  
8 the total activity that is going on. If you can stop  
9 that, you can prevent completion, can't you?

10 MR. SIMPSON: Yes.

11 THE COMMISSIONER: Why do you want to  
12 prevent the other people from carrying on their work  
13 which can be carried on, in spite of what you are doing?

14 MR. SIMPSON: I don't know if work could  
15 be carried on. In many cases the work is so inter-  
16 related.

17 THE COMMISSIONER: Well, if it is, you  
18 don't need a **strike**. All you need is the absence of  
19 workers -- you don't need a picket line to stop them.

20 MR. SIMPSON: That is in some situations.  
21 In other situations, in order to bring economic pressure  
22 to bear on the employer or general contractor, we want  
23 to be able to apply secondary pressure by reason of the  
24 fact that employees and other sub-contractors will refuse  
25 to cross the line. This happens in a legal strike  
26 situation.

27 THE COMMISSIONER: That is where you  
28 have the complaint that is made in Algoma. The steel-  
29 workers refused to stop because 100 bricklayers went  
30 on strike. You would condemn that, would you?





1 MR. SIMPSON: Do you mean we condemn  
2 what the steelworkers did?

3 THE COMMISSIONER: Yes.

4 MR. POLLOCK: In refusing to refuse to  
5 cross the line?

6 MR. SIMPSON: In not recognizing the  
7 picket line.

8 MR. POLLOCK: They recognized it but  
9 they recognized their contract as well.

10 MR. SIMPSON: That is a decision they  
11 have to make. It is not up to me to condemn any members  
12 of the steelworkers union. I would prefer to have seen  
13 them recognize that picket line because that was another  
14 means of the bricklayers bringing economic pressure upon  
15 Algoma to sign a collective agreement.

16 THE COMMISSIONER: You are using these  
17 words "economic pressure" -- that has become a cliché.  
18 Of course, that is what they are fighting for. But I  
19 am talking about the economic -- as a social fact, that  
20 people want this work to go on. You can stop the work  
21 at a certain point by withholding your labour which you  
22 have a perfect right to do.

23 MR. SIMPSON: Sir, I think it becomes  
24 a question -- what you are suggesting is, how can you  
25 be so unconscious socially to prevent work from going  
26 on which is needed by the community.

27 THE COMMISSIONER: That is one consider-  
28 ation, yes. As a matter of fact, arrangements have  
29 been made on the spot by which you really draw a curved  
30 line cutting that particular section of the work off and





1 isolating it as the struck feature, and the rest of it  
2 is free. That has been done and we were told of it a  
3 few days ago.

4 MR. SIMPSON: In construction?

5 THE COMMISSIONER: In construction.

6 MR. SIMPSON: It is possible, but my  
7 own experience would be that in most situations it would  
8 be rather difficult because of the dependence of one  
9 set of sub-contractors on another set of sub-contractors.

10 THE COMMISSIONER: That simply adds to  
11 your strength because if your work is essential, it will  
12 stop all and that is not a question of a picket line  
13 at all. It is a question of the consolidation of all  
14 features of the work.

15 MR. SIMPSON: It is also a question of  
16 timing, when the picket line is put up, at what stage  
17 of construction, because at some stages the picket line  
18 may serve very little purpose if people cross it. The  
19 project could easily be completed, so I think it is a  
20 question of at what stage the picket line goes on.

21 THE COMMISSIONER: You think everything  
22 should be subordinated to that critical moment for an  
23 insignificant feature of the work? I am not criticizing  
24 it, I am simply finding out what the facts are.

25 MR. KOBRYN: Basically, on a construction  
26 site, even on legal picketing, there have been agreements  
27 made amongst the unions that a craft that has gone on  
28 strike will not picket, but no one else would touch its  
29 work, so eventually the project will come to a standstill.

30 THE COMMISSIONER: Yes, that is true,







1 and that appeals, at least to ---

2 MR. KOBRYN: This, again, is on a con-  
3 struction project. But if you go to a project that is  
4 non-union, or possibly mixed, but basically non-union,  
5 and you have been trying to organize the employees and  
6 you have not been very successful, an organizational  
7 or recognition picket line would support, or give the  
8 employee who is employed by the employer, some moral  
9 support that he has a strong organization supporting  
10 him if he should want to join the union and that it is  
11 there to support him. Otherwise, he is faced with the  
12 other alternative, that the moment that union shows  
13 any strength or any signs of moral support an injunction  
14 is issued against it and it has to withdraw.

15 MR. POLLOCK: It seems to me you have  
16 a doubly difficult row to hoe in this particular aspect  
17 of your argument. You have to convince both the employer  
18 and the employee that trade unionism is a good idea.  
19 Now, the industrial unions have only really more or less  
20 got to work against the employer now. You have to  
21 work against both, and in both cases you are faced with  
22 this argument in the residential industry. The employer  
23 says, and quite truthfully, the small employer, "If I  
24 pay union rates, if you organize me I can't complete  
25 this project. I go out of business." The employee  
26 says, "If I have to ask union rates they won't hire me  
27 and I won't get this job and I won't have a place to  
28 work". Now, those two pretty strong economic motives,  
29 I think, are the things that you are fighting against.

30 MR. SIMPSON: Dealing with the second





1 one, Mr. Pollock --

2 MR. POLLOCK: Just let me ask you: Who  
3 and by what methods, who do you wish to appeal to, how  
4 do you propose to appeal to them, what technique, what  
5 method and what people are not going to cross your lines  
6 if it is a non-union project?

7 MR. SIMPSON: Well, those are about 100  
8 questions, but dealing with the two main points that you  
9 dealt with in the beginning, I think one of your propo-  
10 sitions assumes that there will be no business if we get  
11 a high degree of organization because it will eliminate  
12 a lot of residential contractors because they will have  
13 to pay wages that they cannot afford to pay in order to  
14 sell houses. I do not agree with that. I think, if we  
15 are given a little more leeway in organizing a job, it  
16 will mean, generally, an improvement in the working  
17 conditions and wages received by many employees in  
18 residential. But I think there will always be the  
19 holdouts; in other words, there will always be a segment  
20 in the community -- if houses are in great need in this  
21 community, there will always be, in our society, persons  
22 who are able to put up those houses at a cheaper price  
23 and without using union personnel. So I don't think  
24 that you can assume that if we get a higher degree of  
25 organization, we are going to create less work for our  
26 own members.

27 Now, as to the residential contractor  
28 who exploits his employees by paying them low wages  
29 and not giving them certain working conditions, we  
30 don't think that he should be in business, quite frankly.







1 We don't think he deserves to be in business.

2 THE COMMISSIONER: So far, as you say,  
3 you are dynamiting your basic conception of competition.

4 MR. SIMPSON: Well, competition, sir,  
5 as Mr. Justice Frankfurter says, can involve some  
6 cruelties. Competition can mean the obliteration of  
7 some persons from the competitive market completely  
8 because they are not able to compete on the same condi-  
9 tions as everyone else. What we are saying is that many  
10 residential contractors now are able to compete because  
11 of one factor, the factor being that they are not willing  
12 to pay good wages to their men and they are ever ready  
13 to exploit them as far as working conditions are con-  
14 cerned. This is why they are in business.

15 MR. POLLOCK: There are two factors, the  
16 fact that they can't pay the money and they can exploit  
17 the workers and, the second factor, the workers will  
18 come and work for them at those rates.

19 MR. KOBRYN: The three members here are  
20 not from Toronto, Mr. Martin is from London, I am from  
21 Windsor, Mr. Simpson from Hamilton. We have a man from  
22 Toronto here who could answer very easily many of the  
23 questions and we would like to have him up at the front.

24 MR. POLLOCK: You can afford to be away  
25 from Windsor, your house is in good order.

26 MR. MARTIN: Speaking of competition,  
27 you must understand one thing too, that a legitimate  
28 contractor in some of the sub-trades, including the  
29 electrical contractors, they are in business following  
30 a definite pattern. They will buy material at certain





1 percentages as far as profit is concerned and probably  
2 depending on the volume, these percentages can be a  
3 little better. When you say are we trying to stop good  
4 competition, we are not because it is good for us but it  
5 is not competition when an owner becomes his own con-  
6 tractor. In essence, he will take some little fellow  
7 into business in some of the sub-trades and simply say  
8 "We will pay you 2 per cent, what have you got to lose?"  
9 and he will buy the material through that little fellow  
10 who, when that project is over, is out of business. We  
11 are not talking about competition here at all. The  
12 only person we can't get on it is the legitimate con-  
13 tractor who buys direct from the wholesaler, takes his  
14 mark-up, whatever it is, and this would probably vary  
15 with the volume of work that is in existence. He can't  
16 compete. They could come to me and say "Ken, I will give  
17 you 5 per cent". Once again, he is not a general  
18 contractor, but he is doing his own. He is not an  
19 electrical contractor but he is using one man's business  
20 who is probably on the verge of bankruptcy, using his  
21 business and name to buy, probably give the man 5 per  
22 cent and take care of his labour. Now this is not  
23 competition.

24 THE COMMISSIONER: I agree that it is  
25 almost unrecognizable. Regulating so much today is  
26 not such in one sort of way. You regulate wages,  
27 you regulate business. You were speaking from the  
28 Toronto standpoint.

29 MR. MAIN: We have some percentages here,  
30 if you care to take note of them. These changes have







1     come about more or less since 1960 when the great effort  
2     was made, 1960 and 1961, to organize in the residential  
3     field in the Metropolitan area. Since that time, we  
4     have made certain inroads and at the moment - these per-  
5     centages I can't guarantee because it is pretty hard  
6     to guarantee percentages, but at the moment, as far as  
7     the bricklaying work is concerned, I would say it is  
8     approximately 95 per cent organized.

9                     THE COMMISSIONER:     Bricklaying?

10                    MR. MAIN:        Yes.

11                    MR. MARTIN:     These are all percentages  
12     organized.

13                    MR. MAIN:     The cement mason area, we  
14     don't have too much there. If we have 10 per cent, that  
15     is about what we have. As far as the electrical field  
16     is concerned, it is about 90 per cent. Engineers, that  
17     is the hoisting engineers, the excavating people, I  
18     would say the percentage there is approximately 90 per  
19     cent as well. When we come to the ironworkers, that  
20     is the people who do the rod work as far as reinforced  
21     concrete is concerned, ornamental ironworks, the balconies,  
22     stairways and so on --

23                    THE COMMISSIONER:     Is this reinforcing  
24     concrete people?

25                    MR. MAIN:     Yes. The percentage there  
26     is very small, we have 5 or 10 per cent organized. The  
27     percentage of labourers organized in the field is  
28     also very low, about 5 per cent or 10 per cent. As  
29     far as lathing and plastering is concerned, both the  
30     lathing and the plastering at the moment, I would assume







1 are organized to about the same degree, I would say both  
2 of them are organized approximately 90 per cent, lathing  
3 and plastering.

4 The painting industry, I would say about  
5 70 per cent. The plumbing, about 85 per cent. The sheet  
6 metal, that is the people who do the ventilating, air  
7 conditioning and so on, about 90 per cent. There are  
8 two right at the top of the list I didn't mention - the  
9 asbestos workers, this is an unknown quantity, as far  
10 as I am concerned, and the boiler making, that is an  
11 unknown quantity, as far as I am concerned, too. I don't  
12 really know what percentage there might be.

13 THE COMMISSIONER: Boiler makers?

14 MR. MAIN: The people who install the  
15 boilers in the basement to heat the building.

16 THE COMMISSIONER: The installers.

17 MR. MAIN: The installations, yes.

18 MR. POLLOCK: In my rough notes, you  
19 are not in bad shape.

20 MR. MAIN: With these percentages I have  
21 to give you a little bit of explanation. The categories,  
22 as far as construction is concerned in the Metro area,  
23 I think we put in three categories. You have commercial  
24 and industrial, this we have a good hold of --

25 MR. POLLOCK: What is a percentage of the  
26 construction industry which is commercial and industrial?

27 MR. MAIN: Well, we would like to say it  
28 is 100 per cent but, obviously, it isn't.

29 MR. POLLOCK: No, what percent of all  
30 the construction industry is commercial and industrial





1 in the area of Metro?

2 MR. MAIN: You mean by their volume of  
3 construction during the year?

4 MR. POLLOCK: By whatever standards you  
5 want to give it.

6 MR. SIMPSON: As against residential?

7 MR. MAIN: I think, during last year,  
8 there was probably a greater dollar volume of residential  
9 construction than there was commercial and industrial,  
10 I would think, in the Metropolitan area.

11 MR. POLLOCK: You think it is about  
12 even, is it?

13 MR. MAIN: Oh, it is even, I would say,  
14 and maybe the skills would go to the residential con-  
15 struction because in the past couple of years there was  
16 quite a boom. It is maybe cooling out a little bit now,  
17 everybody is talking about tight money and so on, but  
18 in the past couple of years, it at least held its own  
19 with commercial and industrial and probably went over  
20 them.

21 THE COMMISSIONER: Then probably unionism  
22 is weakest where there is no skill required?

23 MR. MAIN: Oh, I can't argue that.

24 MR. SIMPSON: I would say that is  
25 generally true, yes.

26 MR. MAIN: But even where we have skills,  
27 we still have our problems in the residential field. As  
28 I started out to say, we have the commercial and  
29 industrial field which we feel is one area which is very  
30 well organized and then we have residential which we







1 break into, in the Toronto area, two separate sections.  
2 We have the high-rise construction and we have the tract  
3 houses, individual houses, duplex and so on. These  
4 percentages I gave you are in the high-rise construction,  
5 high-rise apartment buildings.

6 MR. SIMPSON: They don't include housing?

7 MR. MAIN: Well, it is hard to give yes  
8 and no answers here. Let us say that these percentages  
9 apply to high-rise construction, apartment buildings.  
10 Out in the housing field itself, single family dwellings  
11 and so on, some of these trades such as the plumbers, where  
12 they have 90 per cent, possibly the contractors they  
13 have, some of them also do house work. It might turn out  
14 that the contractors they have, when they are talking  
15 percentages, could say "Well, we have 50 per cent of the  
16 house work" because of the 90 per cent that is organized  
17 in the high-rise apartment field, there is a percentage  
18 that would do the houses as well, but you will find there  
19 are some contractors who only do high-rise apartment  
20 work and there are other contractors who only do individual  
21 housing work. If you catch a contractor or plumber - we  
22 will just talk about the plumber and it more or less  
23 goes for the other as well - if you organize the plumbers  
24 on the high-rise, if he doesn't do any house work, well  
25 the percentage you have got in there is nothing so you  
26 might get one who does maybe half and half or you might  
27 get one who does equal or all of the work he does is in  
28 the houses and he doesn't touch apartments.

29 MR. POLLOCK: Of the residential con-  
30 struction, what is the proportion of high-rise versus





1 single family dwellings?

2 MR. MAIN: I would not know.

3 THE COMMISSIONER: You do have schemes  
4 by which the subdivision of land takes place and you  
5 may have construction of maybe 100 houses. Is that  
6 generally done by one contractor or by individual con-  
7 tractors?

8 MR. MAIN: What happens is, you usually  
9 have a developer who starts out with the land and then  
10 he divides it and then there are lots for sale. He will  
11 maybe sell 50 lots to one contractor and 100 lots to  
12 another contractor, 50 lots to another fellow and all  
13 the way down the line through the subdivision. But even  
14 the fellow who takes on 50 lots or 50 houses, he will  
15 maybe sell 2 or 3 to somebody else.

16 THE COMMISSIONER: Don't any of these  
17 contractors also undertake to put up the homes, to sell  
18 the homes with the land?

19 MR. MAIN: Not a subdivider, very seldom.

20 THE COMMISSIONER: I have seen that  
21 happen in Ottawa.

22 MR. MAIN: Not here.

23 MR. MARTIN: It is rare.

24 MR. MAIN: Usually the land is subdivided  
25 and the lots are sold --

26 THE COMMISSIONER: Then, for instance,  
27 you have no uniformity of architecture, or anything like  
28 that.

29 MR. MAIN: That is right.

30 MR. POLLOCK: Subject to the overall





1 planning and zoning.

2 MR. SIMPSON: I would say the overall  
3 subdivision depends on the worth of the subdivider.  
4 Some of them impose building schemes in their subdivision  
5 because of their reputation; they want to maintain a  
6 certain reputation.

7 MR. MAIN: There is a multiplicity of  
8 people building the buildings.

9 MR. SIMPSON: Don Mills as an example  
10 of a supposedly well planned creative subdivision,  
11 because of the developer, not because of the builders  
12 who went in and purchased lots. I think the developer  
13 sets the tone for the subdivision.

14 THE COMMISSIONER: Are there not condi-  
15 tions, such a distance from the road at such and such  
16 a cost?

17 MR. SIMPSON: He may set price, style  
18 and make a lot of things subject to his approval and he  
19 can discriminate as to who he is going to sell the lots  
20 to because this will enhance the value of the property.

21 THE COMMISSIONER: And in a subdivision  
22 there may be half a dozen of these men who may have bought  
23 10 or 20 lots.

24 MR. SIMPSON: Yes.

25 THE COMMISSIONER: Are they all subject,  
26 more or less, to uniformity of style so that they blend  
27 in harmoniously, or do they aim for that?

28 MR. MARTIN: To a degree.

29 MR. MAIN: A typical thing is that you  
30 go up to one of these subdivisions and they usually have







1 a trailer there with one or two salesmen, and they will  
2 perhaps have a sign up "Choice of 5 models". So, they  
3 have got 5 models and all they do is stagger them through  
4 the subdivision so that every fifth house, or sixth  
5 house is the same.

6 THE COMMISSIONER: The important thing  
7 is, they are not given to one contractor to build as  
8 an entirety.

9 MR. MAIN: No.

10 MR. MARTIN: It could be a series of  
11 contracts. It could be the Don Jones subdivision and  
12 depending on its size, there could be a number of lots  
13 or buildings under the supervision of one contractor  
14 who has a great number of subs, and where there are 500  
15 houses, there could very easily be 50 or 60 or 70 or 80  
16 contractors who might also have subcontractors under  
17 them, actually doing the building for them.

18 MR. MAIN: And the sub-contractor changes  
19 around from house to house.

20 MR. POLLOCK: By your figures, Mr.  
21 Simpson, you owe me 98 answers. Could you go on to the  
22 next one? The question was, assuming that you cannot  
23 convince these people outside in the union hall, or  
24 assuming you cannot convince the employer, apart from  
25 external pressure in the sense of writing them letters  
26 and having meetings, what techniques on the job are you  
27 recognizing as the legitimate function of picketing?

28 MR. SIMPSON: You mean, why do we want  
29 picketing?

30 MR. POLLOCK: No, I want to know what





1 type you want, who you think it is going to appeal to,  
2 what kind of success you're going to have, what happens  
3 if it fails and what you resort to then?

4 MR. SIMPSON: I think we have to resort  
5 to picketing as an alternative to the ordinary techniques  
6 of organization. If that fails, I don't know what other  
7 techniques we have available, quite frankly.

8 MR. POLLOCK: All right, what kind of  
9 picketing? Who are the pickets and what are they doing  
10 and where are they marching?

11 MR. SIMPSON: In an organizational  
12 situation or a recognition situation?

13 MR. POLLOCK: On Dundas Street, you have  
14 got an apartment building that keeps changing its numbers.

15 MR. SIMPSON: All right. Are you saying  
16 that the numbers are going to keep changing anyway? The  
17 fact we have the ability to picket the job will not  
18 prevent the proliferation of corporations?

19 MR. POLLOCK: I don't know, will it?  
20 You tell me.

21 MR. SIMPSON: Well, it probably -- if  
22 a man has a mind to avoid meeting with a union on any  
23 kind of a relationship, he may choose to set up a number  
24 of corporations to frustrate us. But that is just one  
25 technique he may use. Maybe he would be able to frustrate  
26 us even if we had the right to picket. I think the idea  
27 behind the picketing is that it speeds up the organization  
28 of the job.

29 MR. POLLOCK: Is what you are saying  
30 this, that you will picket, put the pressure on the







1 employer which really short circuits.

2 MR. SIMPSON: Sometimes. Sometimes we  
3 would sign up the members and to avoid going through  
4 these lengthy certification procedures, we could then  
5 picket the job to obtain recognition from that employer,  
6 which is more important.

7 MR. POLLOCK: All right, that is recog-  
8 nition.

9 MR. SIMPSON: And also to prevent the  
10 employer from laying off and discriminating against  
11 people and really reducing our majority.

12 MR. POLLOCK: If you have these people  
13 who will not join the union because they are not, them-  
14 selves, convinced that the union is the answer ---

15 MR. SIMPSON: One of our arguments, of  
16 course, is that we still have an interest in that part-  
17 icular employer and in those particular employees,  
18 because we are working for people who have to compete  
19 on the basis of many factors, but one of the big factors  
20 is wages. So, we have an interest in the wages that  
21 this man is paying his employees.

22 MR. POLLOCK: You are being a policeman,  
23 in other words?

24 MR. SIMPSON: I would hate to think  
25 that we were policemen. I don't think we want that  
26 kind of responsibility. I don't think we are asking  
27 for all that much power. All I am saying is that the  
28 courts have traditionally said "What possible interest  
29 can you have in this particular unit? You do not purport  
30 to have signed up the employees and you certainly have





1 not signed a collective agreement with the employer.  
2 What possible interest do you have?". Well, we say we  
3 have an interest because of the fact that in construction  
4 competition takes place primarily on the basis of wages,  
5 and we are interested in maintaining the wages that we  
6 have won for our members, so that we are interested in  
7 the wages that this particular employer pays his employees.  
8 That is our interest.

9 THE COMMISSIONER: But on your assumption  
10 that the work would take up all the persons concerned,  
11 your work goes on at your union wages, their work goes  
12 on at their sub-union wages. It must be really that  
13 competition is eating into the employment of union men.

14 MR. SIMPSON: I think we get back to this  
15 assumption, that if we organize all the residential, there  
16 will not be any work for our members at those wages because  
17 we will have eliminated so many residential contractors  
18 that it will no longer be economical for them to build  
19 houses. I don't hold water with that. All I am saying  
20 is that their profits may be reduced.

21 MR. POLLOCK: And the prices may be  
22 increased?

23 MR. SIMPSON: Or their prices may be  
24 increased. They may make \$800 a house instead of \$1,200.

25 THE COMMISSIONER: But if you, as union  
26 men, are fully employed, and there is no question of  
27 an unemployment pool, these men are not prejudicing  
28 you in the obtaining of work.

29 MR. SIMPSON: Perhaps when the economy  
30 is, shall we say, going practically all out and commercial





1 and industrial are extremely high, and take up a great  
2 many persons who are organized by unions, that may be  
3 true, but that is a short run thing. Five years ago,  
4 the situation was dramatically different and you had  
5 many, many persons in the building trades unemployed,  
6 particularly outside of the Toronto area.

7 MR. POLLOCK: I thought you told us the  
8 situation in 1962 was the same as it is today?

9 THE COMMISSIONER: The situation you  
10 mention is a situation in which union men are unemployed  
11 and non-union sub-wage men are employed. Now, that is  
12 the basis of your complaint.

13 MR. SIMPSON: No, I don't think that  
14 is our complaint. We are not just interested in  
15 employment or unemployment. We are also interested in  
16 the fact that people who are working are setting a  
17 wage rate which is much below our wage rate and are  
18 working under conditions that we feel are much below  
19 the working conditions that should exist in the industry.

20 THE COMMISSIONER: Yes, but should  
21 exist for whose benefit? Yours? Because you are not  
22 changing your wages. You go on as your standards have  
23 been settled upon.

24 MR. SIMPSON: But we have to maintain  
25 those standards.

26 THE COMMISSIONER: Certainly, and you  
27 have not suggested that you have had to lower them  
28 because of this non-union competition.

29 MR. MARTIN: I think we are losing a  
30 point here. We have all kinds of clergy in the field







1 today -- the ministers from the various religious groups  
2 -- who are trying to bring more people into their fold.  
3 Our idea is to have every working man under a union  
4 agreement. We do not want to stop just because our  
5 present members are working.

6 THE COMMISSIONER: Oh, no, no, no.

7 MR. POLLOCK: Perhaps we could adjourn  
8 for ten minutes.

9 ---Short recess  
10

11 MR. SIMPSON: I would like Mr. Main to  
12 make a very short statement as to one particular trade.  
13 I think we have created a somewhat erroneous impression,  
14 and that is that we are really well organized and we  
15 have very little reason to complain.

16 MR. POLLOCK: Oh, I did not get that  
17 impression.

18 MR. SIMPSON: As long as you did not.  
19 We want our position to be made very clear, and that  
20 is that in the residential end, we are not well  
21 organized. I wanted Mr. Main to deal with just one  
22 particular group, and that is the cement masons --  
23 the forming contractors, and this applies on a high-  
24 rise, where we have a higher degree of organization  
25 than we do in single family dwellings.

26 MR. POLLOCK: They are the low skilled?

27 MR. SIMPSON: They would be lesser  
28 skilled, yes.

29 MR. POLLOCK: They put the forms up  
30 and tie them together and paint them with oil, or





1 something like that?

2 THE COMMISSIONER: Do they put the forms  
3 up or do they have the forms put up by carpenters and  
4 they lay the concrete?

5 MR. MAIN: The normal operation of a  
6 forming contractor -- and this really came in as far  
7 as high rising construction is concerned, going back  
8 I imagine to about 1959; prior to that, the apartments  
9 that were built in the Metropolitan Toronto area, usually  
10 went 3, 4 or 5 floors and most of them were wall bearing  
11 jobs; in other words, they built the walls and put the  
12 joists in for the first floor, the walls went up and  
13 the joists went in and so on, all the way up. They  
14 usually only went, if you take a trip around the Metro  
15 area and look at the apartments that were built around  
16 1959 and 1960 -- the latter 1950's -- there were 3, 4, 5  
17 and 6 storeys. Then, around the beginning of the  
18 60's they started going really up, 15, 20 and higher.  
19 Then in came this forming contractor because the whole  
20 structure then was poured.

21 MR. POLLOCK: They stopped using bricks?

22 MR. MAIN: No, they stopped using the  
23 walls -- the walls did not bear the floors any more.  
24 They would put in their fittings and build columns and  
25 on these columns they would pour a concrete floor, and  
26 then they build another set of columns and the second  
27 concrete floor is poured and so on, all the way up.  
28 Then the bricklayers would come along later and build  
29 their brickwork up on these concrete floors.

30 MR. POLLOCK: Fill in the gaps?







1 MR. MAIN: Yes, all the way up. Now  
2 the forming contractor became a specializing contractor.  
3 He poured the whole structure. On his payroll he would  
4 have labourers and carpenters and rod men who put in the  
5 reinforcing rods, cement masons, the men who finish  
6 the concrete once it is poured. He would have those four  
7 trades. He would also possibly have engineers involved  
8 as far as the hoisting of the material is concerned --  
9 the ready mixed concrete when it arrived -- and possibly  
10 teamsters. But the engineers and the teamsters, the  
11 drivers of the trucks seldom were on the payroll of the  
12 forming contractor. The forming contractor basically  
13 had those four trades -- the labourer and the carpenter  
14 who prepared the forms; the rodmen who put the steel  
15 in, and then the labourers and the cement masons, working  
16 together usually, would put in the concrete in the forms,  
17 and the cement finisher would finish it off.

18 Here you have four different groups of  
19 people -- trades, if you want to call them that, the  
20 labourers, the carpenters the rodmen and the cement  
21 masons, in the employ of one contractor. But there are  
22 four different unions involved because each of these  
23 classifications has a union that establishes rates and  
24 conditions for that particular craft. When the unions  
25 came to apply for certification, let us just take the  
26 carpenters, for example, they would go to a particular  
27 job, talk to the carpenters who were there because they  
28 couldn't talk to the labourers or the rod men or the  
29 cement masons as each of these people had a union of  
30 their own: So the carpenter was just there to try and





1 organize the carpenters on this particular project who  
2 were working for that particular forming contractor.

3 MR. POLLOCK: There was never any  
4 relationship between one union and the other and the  
5 four unions say "Let us organize this employer"?

6 MR. MAIN: Not until recently, no.

7 MR. POLLOCK: What is the reason for  
8 that?

9 MR. MAIN: If you will just bear with  
10 me for a moment. Just to give you a typical example,  
11 the representatives would go to one high-rise project  
12 and possibly there would be, let us say, 15 carpenters  
13 working on the job and they would sign these men up  
14 or endeavour to sign them up, but they couldn't go down  
15 and apply for certification. Let us assume they signed  
16 up the 15 men, they couldn't go down and apply for  
17 certification of this forming contractor on the basis  
18 of these 15 men because he maybe had three other jobs  
19 going in the Metropolitan area and there was maybe 15  
20 men on each of these jobs. So they have to find out  
21 from these men "Where are the other jobs that your  
22 company is working on?" and from this you have to go -  
23 because you have to have the total number of carpenters  
24 in the employ, 55 per cent if you want certification.  
25 There is no use going with the 15 men you have on the  
26 one job.

27 THE COMMISSIONER: Isn't there a  
28 geographical area?

29 MR. MAIN: There is a geographical area  
30 but if you apply for certification of the carpenters





1 who are employed by a particular forming contractor, you  
2 must have 55 per cent of those men to get certification.

3 THE COMMISSIONER: Regardless of where  
4 they are established?

5 MR. MAIN: Yes.

6 THE COMMISSIONER: That applies to the  
7 whole contracting business, doesn't it?

8 MR. MAIN: Yes.

9 MR. KOBRYN: You would have to have 55  
10 per cent in the geographical area. If you have four jobs  
11 going, you have to have 55 per cent of the men working  
12 on the four jobs.

13 MR. MAIN: Which, in itself, is not  
14 easy because you have to find out where these jobs are.  
15 But let us assume that the carpenters felt they had  
16 enough men signed up on, let us assume, the guy again  
17 had four jobs going, they visited the four jobs and  
18 they feel that they have enough to apply for and get  
19 certification. When they apply for certification, they  
20 put in, of course, their cards, the employer comes in  
21 and he states "Well, we have more carpenters than that".  
22 So they have to appoint an examiner. The examiner then  
23 goes in and he says "Well, here are all the people that  
24 the union claims are the carpenters" and he says, "Oh,  
25 no, here are three fellows here and four fellows there,  
26 they are carpenters too". So they have to go through  
27 the whole bit, examining these men. You must realize  
28 what goes on, at least I hope you do: These men are  
29 employed by this contractor, they don't want to lose  
30 their job and we have instances - and it is unfortunate







1 that this information has not been submitted to Mr.  
2 Simpson - but we can give you a typical example of  
3 what happens. Once the examiner gets appointed, if they  
4 put a man on the chair there and they say, "Are you  
5 a labourer or a carpenter or a rodman or a cement mason?"  
6 He has been told to say he is a carpenter.

7 MR. POLLOCK: He is a carpenter today  
8 and when cement masons are applying, he will be a  
9 cement mason?

10 MR. MAIN: Yes. And when the rodmen  
11 are applying he is a rodman. This is ridiculous.

12 MR. POLLOCK: Well, the obvious solution  
13 that springs to my mind is that you get all the unions  
14 applying at the same time.

15 MR. MAIN: So they tried this. The four  
16 unions decided over a year ago, to put on an organizing  
17 campaign and they would all work together and they  
18 would sign up all of the men and when an examination  
19 came along, they would say "Well, if you are a carpenter,  
20 oh well, you can have him" and it would still work out  
21 because they had signed up the majority of the contrac-  
22 tor's employees. But when we got to this stage of the  
23 game, we found out that this gentleman operates 5  
24 companies - 5 separate companies. And for one week the  
25 men get their cheques from company A, for the next two  
26 weeks they get their cheques from company B, for the  
27 next two weeks they get their cheques from company C.  
28 It gets to the stage that all they know is that they  
29 are working for a firm that is in the forming business  
30 but they don't actually know what company they are





1 working for and whatever company it was that the union  
2 applied for, to get certification for, it turns out that  
3 these men were not on the payroll of this company, they  
4 were on the payroll of the other company. So the per-  
5 centages go all to heck.

6 This is the frustrating situation that  
7 the unions are faced with when they try to organize in  
8 the residential field - multiplicity of companies,  
9 multiplicity of trades.

10 MR. POLLOCK: Is there no power in the  
11 Labour Relations Board to rectify that kind of a situation?

12 MR. MAIN: I don't know of any.

13 MR. SIMPSON: Neither do I. This goes  
14 on, as I said before when I gave an example, every time  
15 you are applying for a particular trade the employer  
16 always has the right to reply that "You have applied for  
17 14 out of 16, but actually I have 25 carpenters".

18 MR. POLLOCK: Well, in this circumstance  
19 he has not got that advantage because if he is taking  
20 it from Peter, he is giving it to Paul and both of them  
21 are the devil as far as he is concerned.

22 MR. MAIN: If the four unions go in  
23 together, yes.

24 MR. SIMPSON: And this is a tremendous  
25 burden on four unions going in together. It is not  
26 the easiest job in the world to have four simultaneous  
27 applications going in against one employer at the  
28 same time.

29 THE COMMISSIONER: Does Mr. Goldenberg  
30 make a recommendation on this?







1 MR. SIMPSON: I don't believe he did,  
2 sir.

3 THE COMMISSIONER: It was presented  
4 to him, was it?

5 MR. SIMPSON: I don't think that that  
6 aspect -- I would stand to be corrected, but I don't  
7 think that that aspect was presented to him.

8 THE COMMISSIONER: What was the year of  
9 his report?

10 MR. SIMPSON: 1962 was the date of  
11 his report.

12 MR. MAIN: That was when it came out  
13 but he was appointed in 1961.

14 MR. SIMPSON: There was one recommenda-  
15 tion that a council of unions could make an application.

16 THE COMMISSIONER: Yes, they could form  
17 a council.

18 MR. SIMPSON: Yes, that was one of  
19 his recommendations.

20 MR. KOBRYN: With a man having 5 or 6  
21 companies, he can get around this one too. He is doing  
22 that right now.

23 THE COMMISSIONER: That is just because  
24 he has more ingenuity than you.

25 MR. SIMPSON: I would not say ingenuity,  
26 I would say opportunity.

27 MR. MAIN: I would not say the man  
28 established 4 or 5 companies just to beat us. I imagine  
29 it has something to do with tax structure and so on,  
30 that this came about. It just so happens, since he





1 had the 5 companies, he was able to use it again.

2 THE COMMISSIONER: He doesn't fool the  
3 Taxation Department that way, does he?

4 MR. MAIN: I don't know.

5 MR. MARTIN: I don't think he is above  
6 trying.

7 MR. KOBRYN: This is why, in our brief,  
8 we have submitted recommendations on the injunction  
9 and what harm it is doing to us, and many false state-  
10 ments on affidavits, when they are presented to a  
11 judge and the injunction is issued.

12 MR. POLLOCK: We have not got to the  
13 stage of the injunction yet. We have not heard from  
14 Mr. Simpson yet, as to the picketing. I hope he is  
15 going to get to that soon.

16 MR. SIMPSON: I am not sure in what  
17 direction you want me to go, so far as the picketing  
18 is concerned. I think we were last talking about what  
19 we hoped to achieve by picketing.

20 MR. POLLOCK: Take this situation where  
21 you have an apartment, a residential apartment building  
22 being constructed and you have not got any union members  
23 in that group, or you have some but they are certainly  
24 not organized and working for a union scale.

25 MR. SIMPSON: Yes.

26 MR. POLLOCK: What do you do in those  
27 circumstances, in your scheme, to --

28 MR. SIMPSON: Well, for example, let  
29 us say we make an application for carpenters, we sign  
30 up a majority of the carpenters. Instead of going





1 through the procedures in the Act for certification,  
2 we could peacefully picket that job and compel the  
3 employer to sign an agreement.

4 MR. POLLOCK: How can you compel him  
5 to sign the agreement?

6 MR. SIMPSON: By picketing the job.

7 MR. POLLOCK: What is going to happen  
8 to him if you picket the job? You have got 4 other  
9 trades who aren't union and who aren't going to cross  
10 the line in any event.

11 MR. SIMPSON: Well, again it becomes  
12 a question of timing. If we have proper timing, our  
13 part of the work may be crucial.

14 MR. POLLOCK: If your part of the work  
15 is crucial, then you don't have to picket at all. It  
16 was suggested by the Commissioner that you just withdraw  
17 your labour and he can't complete it.

18 MR. SIMPSON: First of all, we have  
19 to assume now that the courts would say that such  
20 picketing is unlawful.

21 THE COMMISSIONER: When you say "such  
22 picketing" --

23 MR. SIMPSON: Secondary picketing.  
24 This kind of picketing is now unlawful. We are starting  
25 off with that assumption.

26 MR. POLLOCK: Let us start off with  
27 nothing, let us start off with what you hope to accom-  
28 plish and what techniques you want to employ and we  
29 will then determine whether they ought to be legal  
30 or not legal.







1 MR. SIMPSON: All right, but I am just  
2 saying, I think we have to start off now with the very  
3 important assumption that they are not lawful.

4 MR. POLLOCK: Let us wipe out the  
5 assumption, let us start on the only assumption I gave  
6 you, that this is a place on Dundas Street that is  
7 starting to be built, it is a residential place, you  
8 haven't got anybody unionized, you haven't got anybody  
9 certified, what do you do? What are you going to do?

10 THE COMMISSIONER: I think you are saying  
11 that this is organizational picketing.

12 MR. SIMPSON: I think, first of all,  
13 Mr. Pollock, you are wrong in assuming -- I said before  
14 that some of the skills that go into the building of  
15 that apartment building are heavily organized. The  
16 persons who put up the elevators are heavily organized,  
17 the electricians are highly organized. Now, if we are  
18 permitted to put up a peaceful picket line in order to  
19 get recognition as the majority union of, for example,  
20 let us say the carpenters, then other trades who are  
21 organized and who are working at the job, would refuse  
22 to cross the line.

23 MR. POLLOCK: There is no unity of  
24 interest as there is in England, for example, of union  
25 people working with non-union people - they will work  
26 with anybody, is that it?

27 MR. SIMPSON: That is another argument.  
28 There are cases in Ontario now where non-union and union  
29 do work together because they have to because they are  
30 not permitted to picket. This is the point I made





1 before, that we have to assume that the law says they  
2 cannot picket that job and in many cases you cannot  
3 refuse to cross a picket line.

4 THE COMMISSIONER: What do you mean  
5 you cannot refuse?

6 MR. SIMPSON: Well, for example, if  
7 the electricians who were working on an apartment build-  
8 ing, refused to cross a picket line, they could, under  
9 the present legislation, be subject to an application  
10 to prosecute them for taking part in an illegal strike.

11 THE COMMISSIONER: Yes, that may be so.

12 MR. SIMPSON: They are caught by that  
13 situation almost immediately. I don't think, Mr. Pollock,  
14 with great respect, that you can take the assumptions  
15 that are inherent in the questions you are asking me  
16 now. I think you have got to assume that many of the  
17 things that these people would like to do or would want  
18 to do to enforce the application for certification -  
19 or, I am sorry, to enforce the desire by one union to  
20 organize in an apartment project, they are not permitted  
21 by law now.

22 MR. POLLOCK: That is why we are here  
23 today, Mr. Simpson: We are trying to find out whether  
24 they ought to be allowed.

25 MR. SIMPSON: What I said before is  
26 that if, for example, we are permitted to picket for  
27 a particular trade union, then we could ask other trades  
28 not to cross the picket line, thereby bringing pressure  
29 on that employer to sign an agreement with us.

30 MR. POLLOCK: Assuming he's got those







1 other trades, but take this example - I keep giving it  
2 to you - you are at the initial stage of construction,  
3 you don't have any elevator people to put up the elevators,  
4 you have got cement masons pouring the cement, we have  
5 got ironworkers putting in the rods and we have got  
6 labourers clearing the rods.

7 MR. SIMPSON: At each stage of construc-  
8 tion, you will find that there are highly skilled people  
9 who are essential to the construction and who are  
10 organized. For example, the usual situation that arises  
11 is when the truck driver, the ready-mix driver, who is  
12 a teamster, just after the excavation has gone in and  
13 the forms are just going up, he is the first man to come  
14 to the job. This is where the application for an  
15 injunction usually takes place because he is the first  
16 person who refuses to cross the picket line.

17 THE COMMISSIONER: The teamster?

18 MR. SIMPSON: Yes, the man who drives  
19 the ready-mix.

20 MR. POLLOCK: You can ask him not to go  
21 into that job because it is a non-union job? That is  
22 not enough to keep him from going in?

23 MR. SIMPSON: Well, again, we have to  
24 assume there that the situation is very much like the  
25 situation in the United Kingdom where you have a very  
26 highly organized trade union society, as far as the  
27 working force is concerned, and where communication  
28 channels are very well organized and very well developed  
29 and where you do not need a picket line to tell someone  
30 that this employer is having a labour dispute with his





1 employees, and not to assist him. We need them here,  
2 though, because I think it is pretty obvious that we  
3 are not a highly organized trade union society, and  
4 picketing happens to be the most effective means of  
5 communicating information about a labour dispute.

6 THE COMMISSIONER: The trouble is, there  
7 is more than communicating information.

8 MR. SIMPSON: Yes, there is.

9 THE COMMISSIONER: It is not the com-  
10 munication of information that you depend on. Everybody  
11 knows there is a strike. Everybody who is interested  
12 knows it.

13 MR. SIMPSON: It is the purpose for which  
14 the information is communicated.

15 THE COMMISSIONER: It is the unspoken  
16 purpose, really, that you have in mind, and that is what  
17 you object to when an injunction is issued, because, as  
18 Mr. Archer, I think it was, said, you cannot have what he  
19 claimed the right to have, mass picketing, without having  
20 the potential threat which might burst into flames at  
21 any time.

22 MR. SIMPSON: In our brief, sir, we have  
23 acknowledged that the purpose of picketing is not merely  
24 to communicate information. The effective purpose of all  
25 picketing is to bring -- I have to use the word -- is to  
26 bring economic pressure to bear. Picketing means you are  
27 going to harm someone.

28 THE COMMISSIONER: Well, legitimately,  
29 by persuasion.

30 MR. SIMPSON: Yes, but the end result is





1 going to mean ---

2 THE COMMISSIONER: It is persuasion, you  
3 really have in mind?

4 MR. SIMPSON: But the end result is  
5 always going to be some form of pressure exerted on  
6 someone else.

7 MR. POLLOCK: But the only way you can  
8 stop this job, in other words, is not by the old method  
9 of withdrawing your labour but by preventing some key  
10 person, not you, not you the cement mason and not you  
11 the ironworker and not you the labourer, from coming to  
12 work. Because everybody is prepared to come to work  
13 at the rates they can get, you are saying to these people,  
14 "You cannot work at those rates and we are going to  
15 stop the whole project. How are we going to do this?  
16 We are going to do it by preventing a very skilled and  
17 very highly organized and very unionized craftsman from  
18 working in this plant". Now, if that man is convinced  
19 of the merit of your dispute, he won't work there anyway,  
20 will he?

21 MR. SIMPSON: He may not even know about  
22 the dispute while he is in the building because, as I  
23 said, the lines of communication are not that well  
24 developed. Unfortunately, they are not that well  
25 developed.

26 MR. POLLOCK: But surely you know who  
27 the unions are involved in looking after this arrangement.  
28 They know who their members are. Can't you call them  
29 and say "We have a problem here. You have got people  
30 coming into this job. Will you call them off and keep







1 them from working here"?

2 MR. SIMPSON: If we do that, we may be  
3 subject again to ---

4 MR. POLLOCK: Can't you do that as opposed  
5 to having the parade of pickets?

6 MR. SIMPSON: Mr. Pollock, if we could  
7 do that, then we probably would do it, but I think the  
8 first problem is one of just a mere communication. It  
9 is not possible to know, or even to communicate about  
10 all the non-union jobs that are going on where union  
11 people are working, in the construction industry. The  
12 lines of communication are not that well developed.  
13 This is why we have resorted to picketing, because at the  
14 site, the impact of the information or the advertisement,  
15 shall we say, is going to be most effective from a  
16 communication point of view. This is where we have to  
17 reach people, at the site, because this is where they  
18 come to do their work.

19 THE COMMISSIONER: Yes, but you are very  
20 earnestly advocating this and it must be because the  
21 present condition adversely affects your clients. That  
22 is so, isn't it?

23 MR. SIMPSON: Yes.

24 THE COMMISSIONER: Now, in what respects  
25 does it injuriously affect your client? If you have  
26 full employment, you say it will not result in any  
27 unemployment because the work is there, you want them  
28 to work but you want them to work as unionists. Now,  
29 what is the real motive? I am not suggesting anything  
30 improper.





1 MR. SIMPSON: No, sir. Our motive is  
2 that we want to maintain working conditions in an  
3 industry and we don't see any reason why one part of  
4 our industry should not have the same condition as  
5 another part of our industry.

6 THE COMMISSIONER: When you say "conditions  
7 of work", you are really not meaning that at all. What  
8 you are concerned with are the conditions that have  
9 relation to individuals outside of the work as well as  
10 in the work -- the relationship of your union organiza-  
11 tion.

12 MR. MARTIN: The standards.

13 THE COMMISSIONER: But are you concerned  
14 with the standards?

15 MR. SIMPSON: We say only a union can  
16 enforce. The Goldenberg Commission bears this out, that  
17 only a union can enforce certain minimum working condi-  
18 tions in an industry.

19 THE COMMISSIONER: Just tell me what  
20 you mean by "working conditions".

21 MR. SIMPSON: Wage rate, hours of work,  
22 vacations with pay, unemployment benefits.

23 THE COMMISSIONER: But if these men  
24 are willing to work under the conditions which you  
25 complain about, what is the impact on you?

26 MR. MAIN: May I just say that we, in  
27 the union movement, feel we have a moral responsibility  
28 to see if there are men working in the construction  
29 industry, whether they are doing carpentry work or  
30 sheetmetal work or plumbing work or bricklaying work,







1 if we have established hourly rates, so much per hour,  
2 vacations with pay, et cetera, we want to see them enjoy  
3 the benefits of our efforts.

4 MR. POLLOCK: Whether they want it or not

5 MR. MAIN: Well, I have not met a man  
6 yet in the construction industry who was working for  
7 \$2 per hour, who would not sooner work for \$4 per hour.

8 MR. POLLOCK: Yes, but how many would  
9 you meet who are working for \$2 per hour and would sooner  
10 work for \$2 an hour than not work for \$4 an hour?

11 MR. MAIN: If you talk to the man and  
12 get to know what his thinking is and he gets to know  
13 what your thinking is, you will usually find, if he can  
14 do the same job and get \$4 an hour rather than \$2, he  
15 will join the union.

16 MR. POLLOCK: If he can get the same  
17 job, that is right. I agree with that.

18 MR. MAIN: Who is to say he is not going  
19 to get the same job? If we organize the project, he  
20 becomes a member of the union and the contractor signs  
21 an agreement and he carried on working.

22 THE COMMISSIONER: Do you seriously  
23 suggest that he does not feel he will get more work  
24 as he is, than if he joins the union?

25 MR. MAIN: Pardon?

26 THE COMMISSIONER: Do you think he does  
27 not really feel that he has more work under the condi-  
28 tions in which he is working, than if he joined the  
29 union?

30 MR. MAIN: No, I don't think so.





1 THE COMMISSIONER: You don't think he  
2 has more work?

3 MR. MAIN: No, I don't think so.

4 MR. KOBRYN: Let us call a spade a  
5 spade. Let us not beat around the bush. We have con-  
6 tractors -- in my area they are all practically union.  
7 In other areas where they are not all practically union,  
8 the contractor will start off small, non-union. Maybe  
9 he has not got the finances to start bidding on work.  
10 He is taking small stuff and he can manage and maybe  
11 you can't get him at the time. He has a very limited  
12 work force and probably all relatives, or something like  
13 this. But if you don't make an attempt to get this  
14 contractor and get him unionized, the first thing you  
15 know, he starts growing and then he starts cutting into  
16 the actual bids that our contractors are bidding on. He  
17 gets bigger.

18 THE COMMISSIONER: So it does affect  
19 you in that way?

20 MR. KOBRYN: That is right. This is  
21 what we have to protect ourselves against. Then we get  
22 to a position where there are more non-union contractors  
23 than union contractors and then we might as well give  
24 up the ghost.

25 THE COMMISSIONER: That is what we want  
26 to hear, the reality behind all these words and one thing  
27 and another.

28 MR. KOBRYN: That is right, sir. We  
29 have no alternative but to go out and organize everyone,  
30 and as the union spreads, the work opportunities for





1 our members spreads and for the new members. But if  
2 it should start shrinking, yes, I see your point of view.  
3 It shrinks and the work opportunities are not there.  
4 That is why we are here. That is why we are in this  
5 game to see that the work opportunities spread with  
6 unionization.

7 THE COMMISSIONER: Well, that makes some  
8 sense. You show that you have an interest in it.

9 MR. MARTIN: A contractor could be in  
10 the City of Toronto and he could be organized and it is  
11 a proven fact that many of the high-rise people who are  
12 now organized under union contracts are building bigger  
13 and better buildings, so the new wage rates, the new  
14 structure of conditions have not put them out of business.  
15 This takes the old criteria away from them, and their men  
16 become a little more union conscious. That same man  
17 could go to London or Windsor or some place else and he  
18 could become non-union and hire a complete staff of  
19 people from the area, and because he is outside the  
20 normal bargaining unit that he had in the City of Toronto,  
21 the geographical unit, he can go into the London or  
22 Woodstock or Kitchener or Kingston area and become a non-  
23 union contractor. Once again, we are going through  
24 all the guiles that were used by stalling, the various  
25 number of companies and whatnot. We feel that at any  
26 given time on that job, there are going to be union  
27 people and our right to peacefully picket would give  
28 those people who are union the legal right under their  
29 contract to support us in getting better conditions for  
30 the men we are trying to organize.







1 MR. POLLOCK: What is the term in your  
2 contract that gives you that right?

3 MR. MARTIN: Right now, a picket line  
4 is legal. This would be a legal picket line. Any man  
5 who recognized that picket line of his own free will  
6 would be in no violation of any contract with his employer.

7 MR. POLLOCK: He can only recognize  
8 legal picket lines under his contract with his employer?

9 MR. MARTIN: That is right. If this  
10 picket line was our legal right to do it, this man is  
11 not violating any law, nor can his employer say "You  
12 will cross it because it is not legal". We would like  
13 to have the right so that this line is legal and those  
14 who wish to support us, with the better conditions and  
15 the others, would be able to support us and they would  
16 be able to go in or refrain from going in.

17 MR. KOBRYN: We cannot, without a picket  
18 line, at the present time, withdraw our forces from a  
19 contract. He can go to the Labour Board and charge the  
20 union and all of its employees with an illegal work  
21 stoppage.

22 MR. POLLOCK: But an illegal work stoppage  
23 does not do any good in any event. You have told me  
24 that in these particular, unorganized trades. In the  
25 "low-skill" types of work there are lots of people ready  
26 to flood into those areas.

27 MR. KOBRYN: Yes, but if it happens to  
28 be the teamster who is delivering the concrete to that  
29 forming contractor, and he doesn't cross, the effect  
30 is wonderful.





1 MR. POLLOCK: But it is not the effect  
2 on the workers. It is the effect on the employer by  
3 closing the site, not because you have got all these  
4 individuals organized who want recognition. You want  
5 to compel these non-union men to become union men, not  
6 because they want to but because the employer is going  
7 to sign an agreement with you because you are stopping  
8 somebody else from coming in.

9 MR. KOBRYN: That is only an assumption  
10 and, in most cases, the employees are scared to sign  
11 with the union because they are going to lose their  
12 jobs. There is no seniority, there is no protection in  
13 construction and there is very little likelihood that  
14 you could prove discrimination unless the employer went  
15 right off the deep end and fired everybody right off  
16 the bat. Otherwise, you have not got a chance to prove  
17 discrimination, because he just says "I am terminating  
18 this job. I am switching my forces to another project.  
19 I don't need you right now". He can lay off any number  
20 of those people and particularly the people you have  
21 signed up. But if you have a picket line, especially  
22 on recognition or organizational picketing, then at  
23 least there is somebody out there who is willing to  
24 support us all the way and give these people moral  
25 support. Every man wants a good livelihood and there  
26 are certain conditions he has to put up with to get  
27 this livelihood and many employers have a real strangle-  
28 hold on these people.

29 MR. POLLOCK: So the simple withdrawal  
30 of your labour is not sufficient?







1 MR. KOBRYN: In a lot of cases, yes,  
2 but as the Act stands right now, we cannot withdraw  
3 this labour, right now.

4 MR. MARTIN: Violation of agreement.

5 MR. KOBRYN: That is right.

6 MR. POLLOCK: What if you haven't an  
7 agreement?

8 MR. KOBRYN: The structural steel, for  
9 a long time, many apartment buildings were built of  
10 structural steel. The Toronto building trades put in  
11 informative picket lines against these developers.  
12 Consequently, the only people who were union on the job  
13 refused to cross these picket lines. What have we found  
14 since that time? There are no more structural steel  
15 apartments, they are all poured concrete so they got  
16 rid of the union men. It was very simple.

17 MR. SIMPSON: I think in our brief, on  
18 page 19 and at the top of page 20, we do deal with the  
19 question of the employee's right to choose a union of  
20 his own choice against compulsion by an organization  
21 drive backed up by picketing, which is a problem which  
22 you posed, Mr. Pollock, and I think our reasoning boils  
23 down to the fact that we do have an interest in a person  
24 who is working under non-union conditions in maintaining  
25 our own conditions, because we are permitting a contractor  
26 to develop who can compete with our own employer and who  
27 eventually may be able to out-bid our employer on an  
28 awful lot of jobs, especially if he is competing on the  
29 basis of wages alone.

30 MR. POLLOCK: All right, now complicating





1 this matter further, take the situation where you don't  
2 have one employer hiring all these different trades and  
3 you have the sub-contracting of the plastering, the  
4 cement work, the brickwork, the hoisting engineers and  
5 they are all different people, all different employers,  
6 so your particular employer is the cement contractor.  
7 You can't get an agreement from him. Let us make things  
8 simple and say that you have got an overwhelming majority  
9 of the employees together who signed cards, and for  
10 other reasons you can't make application for certifica-  
11 tion, then the only weapon you have, really, is to with-  
12 draw the employees of another employer so that he will  
13 say to your employer, "Come on, settle your agreement,  
14 get an agreement with these guys, let us get on with  
15 the job". And you do this by picketing, I assume by  
16 peaceful picketing. Is that right? A sign saying  
17 "This is a picket line, do not cross it. Mr. Smith of  
18 the cement people, is unfair".

19 MR. MARTIN: This is giving one union  
20 the right to support and help another on a legitimate,  
21 legal basis.

22 THE COMMISSIONER: I was just wondering.  
23 Can you give us any instance in which such a develop-  
24 ment as you have envisioned, has actually taken place?

25 MR. SIMPSON: In the law, you mean?

26 THE COMMISSIONER: No, in the organiza-  
27 tion of non-union contractors where you begin with a  
28 few and then you gradually increase until you finally  
29 have a group that is competing and taking your work.

30 MR. SIMPSON: Do you want us to sort of





1 name contractors?

2 THE COMMISSIONER: Yes, this is a logical  
3 possibility. Now, has it ever worked out that way?

4 MR. KOBRYN: Well, we have a situation  
5 right now in Wallaceburg, that is between Windsor and  
6 Sarnia, or between Chatham and Sarnia, where the con-  
7 tractor is non-union. He has taken several jobs away  
8 from union contractors because they could not compete  
9 with him, even union contractors located right in the  
10 City of Wallaceburg. We attempted to organize him, we  
11 withdrew our forces by having an informative picket,  
12 a picket that sat in a car, didn't walk in front of  
13 the job at all, just sat in a car.

14 THE COMMISSIONER: But the important  
15 thing is that they took work that your union people  
16 didn't have and couldn't get.

17 MR. KOBRYN: That is right, they took  
18 three schools away from us.

19 THE COMMISSIONER: That is the informa-  
20 tion I want, because it seems to me it necessarily  
21 follows that that is what your complaint is based on;  
22 it is what you consider unfair competition.

23 MR. KOBRYN: That is right and we fought  
24 it, it is still in the courts. We are fighting the  
25 injunction because of false statements, postponements  
26 are being made but the point of the matter is he is  
27 winning the battle. His job is continuing while we are  
28 not there.

29 THE COMMISSIONER: This is an injury  
30 to organized men, which is to the benefit of the public







1 interest and the benefit of our construction activity  
2 and we have no other means than by forbidding it, that  
3 is your proposition?

4 MR. KOBRYN: Yes. This man started  
5 small. First he had probably a couple of houses. Now  
6 he has gone pretty big and he could take 3 schools on  
7 in one setup in a smaller town. Before we know it, he  
8 will be moving into a bigger area.

9 MR. POLLOCK: There must be some  
10 administrative machinery that can solve your problem  
11 of the changing of addresses or changing of company  
12 names. You are familiar, Mr. Simpson, with the position  
13 in Montreal and Quebec, of the collective decrees where  
14 the standard wages are projected throughout the industry,  
15 the wages determined by collective bargaining and the  
16 collective bargaining agreement and the wages and the  
17 hours of work, the guts of the agreement, are declared  
18 by statute to exist.

19 MR. SIMPSON: Prevailing standards in  
20 the industry, yes.

21 MR. POLLOCK: Is that a logical alter-  
22 native to this type of competition, that you are afraid  
23 that these other people are going to get, the unfair  
24 advantage that the non-union contractor is going to  
25 have over your union contractor? If he has to pay the  
26 same wage and he has to work the same hours, then he  
27 is not in any advantageous, competitive situation?

28 MR. SIMPSON: He is to the extent  
29 that he can ride along on someone else's negotiations  
30 and doesn't have to employ his labour or time or anything





1 else. All he has to do is wait for wage rates to be  
2 settled. I don't know how effective the decrees are  
3 in Quebec or who enforces them.

4 MR. POLLOCK: I am advised that they  
5 are reasonably effective in that particular area.

6 MR. KOBRYN: We don't believe in the  
7 decree at all.

8 MR. POLLOCK: Why don't you agree?

9 MR. KOBRYN: Well, our Federal Govern-  
10 ment, who has a prevailing wage rate on federal projects,  
11 we have been attempting with the Federal Government  
12 for many years, to include all our fringe benefits,  
13 like pensions, welfare, vacation pay and various things  
14 that we have negotiated for our people, which are  
15 monetary. The Federal Government has not recognized  
16 this and, in some cases, the unions go as high as 45,  
17 50 and 60 cents an hour and if you take that 60 cents  
18 an hour in a competitive bid, our union contractors  
19 cannot compete with the non-union contractor who has  
20 just got to pay the wage rate and none of the fringe  
21 benefits.

22 THE COMMISSIONER: Of course, it is a  
23 very difficult thing to find the consideration to justify  
24 any particular level of wages, isn't it? How are you  
25 going to do it? Apart from the battle method which we  
26 talk about, the lining up of this fight and that fight  
27 and the other fight, what are the considerations that  
28 ought to be taken into account to determine the amount  
29 that a certain function in society ought to be compensated  
30 for as a just portion of the total production which is







1 what it amounts to? How are you going to do it? What  
2 is the rationale of determining wage levels? Because,  
3 you see here, these men who don't belong to the union  
4 consider these wages are fair or they would not work  
5 at them.

6 MR. SIMPSON: They have no other choice.

7 THE COMMISSIONER: They are willing  
8 even to dare the dislike of their fellow workers by  
9 refusing to join a union and they are willing to accept  
10 what is given. Now the ordinary inference from that  
11 is that they think that that is fair because they are  
12 not living in a state of serfdom, they are not poverty  
13 stricken I must assume, so far as they are brought in  
14 from the outside, they consider this life is certainly  
15 better than that which they left. I am not arguing for  
16 low wages at all: I am simply trying to find out the  
17 justification that these men have for their own actions.

18 MR. KOBRYN: One of the things we use,  
19 basically, if a lad has come from the other side, in  
20 most instances our conditions are better than what he  
21 came from. Maybe that might be a blanket statement,  
22 but then again, the other point they use is that he  
23 can work unlimited hours. He doesn't have to worry  
24 about a union limiting his hours to 8 hours a day, he  
25 can work unlimited hours and at the end of the week,  
26 with unlimited hours, he is going to make as much money  
27 as that other fellow across the street, on union wages.

28 THE COMMISSIONER: Now, does he do  
29 that, in fact?

30 MR. KOBRYN: He does.





1 MR. MARTIN: He tries to. When he  
2 originally comes over here - and this is happening with  
3 a lot of these people now - he is coming to a different  
4 country, a different land, a different standard of  
5 living, he sees everybody running around in a car and  
6 having a fridge and stove which is not as prevalent in  
7 some of the European countries as we have here or in the  
8 United States. He becomes embodied in our standards  
9 without even being aware of them, he has so many bills  
10 he becomes afraid if he is not going to work. After  
11 he is here for a while, this man's attitude changes: he  
12 learns our ways and he learns that we didn't get the  
13 stove and the Cadillacs the first day we went to work  
14 either. This man's whole attitude changes and when he  
15 has committed himself to bills - and it isn't hard to  
16 find this out - when he has committed himself along  
17 with his employer saying "You will work for me for  
18 years and years. You have a lifetime job here. You  
19 will retire with me", he has no pension plan but he  
20 is intimating that the man has a safe job, he becomes  
21 involved to an extent that when we are in contact with  
22 him, the fear of the employer pressure is on him, of  
23 losing his job, but once he starts to level out in an  
24 economic level and his bills become normal, this man  
25 is no problem.

26 THE COMMISSIONER: Does he join the  
27 union then?

28 MR. MARTIN: He is more susceptible  
29 to join the union because he hasn't got the fear of  
30 losing everything he has got.





1 THE COMMISSIONER: That may be, there  
2 is a period there in which he must become adjusted to  
3 the new conditions of his living.

4 MR. MARTIN: It is not because he wants  
5 to do those things, as you indicated, sir, it may be  
6 beyond his control.

7 THE COMMISSIONER: What he wants to do  
8 is work and earn money and he is satisfied, certainly  
9 externally he is satisfied to accept that because he  
10 continues it. It may be he becomes, as they say,  
11 sophisticated after a while, and he may be then in the  
12 mood to team up with a union. But up to the present  
13 time now, he is satisfied in the sense that he wants  
14 that work because it gives him a chance to do more work  
15 than he could if he joined the union.

16 MR. KOBRYN: On this point here, of more  
17 work, the employer knows that if he becomes unionized  
18 in the construction field, there are several unions  
19 that have jurisdiction over certain portions of the work.  
20 So this chap he has been promising all this work to, has  
21 been used on several categories. He might use him as  
22 a cement mason, as a reenforcing steelman, as a labourer,  
23 a bit of a carpenter and everything else. He can  
24 promise him this work but once he becomes unionized,  
25 he is going to have to do his own type of work. So he  
26 tells this fellow "Now if you become union, whatever  
27 union you sign up with, this is the only work that you  
28 are going to be able to do and when that work is finished  
29 on this project, you are finished too."

30 MR. POLLOCK: Isn't that true?







1 MR. KOBRYN: Yes, that is why we have  
2 hiring halls, that is why people work for many contractors.  
3 This is the difference in the construction industry.  
4 There is nobody has a permanent job: the employer can't  
5 promise you work beyond what he has contracted for.

6 MR. POLLOCK: Let me stop you there.  
7 This man can promise this man a job. He has just done  
8 it, he has said to him "Well, I have got work to do and  
9 I will be doing construction work and sometimes I will  
10 need you as a carpenter and sometimes I will need you  
11 as a cement man and sometimes I will need you as these  
12 things.. But, if I don't have any cement work to do,  
13 I will put you on carpentry but if you are a member of  
14 the cement union, I can't put you on carpentering so you  
15 will have to go somewhere else".

16 MR. KOBRYN: Isn't this again unfair?  
17 It is unfair competition and this is what we are trying  
18 to eliminate.

19 MR. POLLOCK: But perhaps this fellow  
20 wants to have security in employment, maybe he wants to  
21 work for one employer, maybe he would take the security  
22 of working for this one employer in the various functions  
23 as a better bargain than going down and working on this  
24 one thing, going down to the hiring hall hoping to get  
25 another job somewhere, going out somewhere else, meeting  
26 all new conditions again, things of an unstable nature.

27 MR. MARTIN: It is a fictitious promise  
28 too, because that promise is no good once the contractor  
29 goes broke either.

30 MR. SIMPSON: Of course, we say that





1 his interest is not entirely paramount.

2 MR. POLLOCK: It is absolutely paramount  
3 to him.

4 MR. SIMPSON: It is, but on the one  
5 hand, when he makes this decision to work for, shall  
6 we say, a smaller wage with longer working hours and  
7 under worse conditions in the long run, he is going to  
8 harm us. We have an interest in the fact that as long  
9 as he makes himself available in large enough numbers,  
10 he is going to hurt us.

11 THE COMMISSIONER: Yes, but what is he  
12 doing to the public? One of the great demands in  
13 this country, as in the whole of North America, is for  
14 more homes. Why are there not more homes? It is the  
15 cost, I should say. It is the cost of putting up a  
16 home. Now, is it possible that the costs are too high  
17 in the public interest?

18 MR. SIMPSON: I don't think the fact  
19 there is a shortage of housing can be laid at the door  
20 of the building trades unions.

21 THE COMMISSIONER: I am putting it at  
22 the cost. I have not yet analysed, or asked you to  
23 analyse, that it is a great cost. But it is the cost.  
24 How can a young man today, coming into maturity and  
25 wanting a home for himself and family, how is he going  
26 to raise, say, \$25 thousand to build a house? What  
27 are the factors that are contributing to this abnormal  
28 cost of construction?

29 MR. SIMPSON: Maybe the lack of adequate  
30 lending facilities.







1 THE COMMISSIONER: Yes, that is one  
2 factor -- the interest.

3 MR. SIMPSON: It may be the burden of  
4 the Federal or Provincial Government here.

5 THE COMMISSIONER: This is private enter-  
6 prise, isn't it? Competition. We must change our  
7 assumptions if you are going to talk about government  
8 intervention. The government is intervening because it  
9 is impossible for so many people to embark upon the con-  
10 struction of a home for themselves.

11 MR. SIMPSON: The only reason I interject  
12 the government is because the government has been in  
13 the housing field for a long time under the auspices  
14 of Central Mortgage and Housing.

15 THE COMMISSIONER: Why? Because of the  
16 failure of private enterprise to give the necessary  
17 accommodation to human beings. Human beings could not  
18 meet the demands of these contractors. The contractors  
19 say, "We can't meet them because we must meet the demands  
20 of labour".

21 MR. KOBRYN: Could I answer that, sir?  
22 Coming out an area where housing is organized -- all  
23 housing is unionized -- the price of a house has not  
24 gone up because of labour. Now, I will just give you a  
25 sample of that. You could buy a house in Windsor in  
26 1957 for \$11 thousand. I priced these houses the other  
27 day and a house about the size of the one that I live  
28 in and possibly a bit smaller, under 1,000 feet, the  
29 same house went up in price to \$21,500. Now, the wages  
30 in the Windsor area have not increased in any amounts





1 like this. The biggest price of housing is the land  
2 speculators -- the cost of land. Where you used to  
3 be able to get a lot for \$1,000 or \$2,000, you are now  
4 paying 7 and \$8 thousand. They are still putting  
5 almost the same price of home on that same lot but they  
6 are paying 5 or \$6 thousand more for that lot.

7 THE COMMISSIONER: I quite agree. I  
8 think that is a very important factor. Now, let us  
9 get down to a few concrete details. Take a carpenter  
10 in your organization: What is his annual return in the  
11 form of income, roughly?

12 MR. KOBRYN: A carpenter was lucky to  
13 make 5 before. Now that he has his increase, he might  
14 be doing better now than 5 thousand. He is very affected  
15 by weather. What you have to understand in our industry  
16 is that we are affected by many things -- weather is  
17 one of them.

18 THE COMMISSIONER: Yes, but they are  
19 getting a bonus, say, on winter work.

20 MR. KOBRYN: The employee gets none  
21 of this bonus. Even if the project is in operation,  
22 many projects are in operation and when you come to a  
23 very cold day, a bricklayer can't lay brick because  
24 his mortar will freeze. There are many reasons why  
25 you can't work.

26 THE COMMISSIONER: We can take that  
27 into account, and you say the annual remuneration for  
28 carpenters is somewhere around \$5 thousand?

29 MR. KOBRYN: It may be a little higher  
30 than that in the Windsor area, but it was not too long





1 ago when we argued the point that it was only about 3  
2 or \$4 thousand because of lack of work. Now, possibly  
3 it is higher because he was able to get a little over-  
4 time because there was a shortage of people.

5 THE COMMISSIONER: What is the propor-  
6 tion of cost in a house as between material and labour?

7 MR. MARTIN: For the plumbing, I think  
8 you will find plumbing in a house now is cheaper than  
9 it was 15 years ago. With the new innovations in the  
10 material, a building goes up so fast nowadays that the  
11 amount of labour is definitely being cut down by a great  
12 deal more than the amount of increase in the hourly rate.

13 THE COMMISSIONER: But we have to go  
14 back to the labour which makes the article in pre-  
15 fabricated form. Total labour as against lumber and  
16 superintendence.

17 MR. MARTIN: On a construction basis,  
18 there are less man hours on a house than there was a  
19 few years ago.

20 THE COMMISSIONER: Yes, on the job, but  
21 it may also be less in total.

22 MR. KOBRYN: Just this summer there was  
23 an investigation of the labour costs involved in a home,  
24 a \$22 thousand home. The figures are in Windsor and I  
25 can mail them to the Commission.

26 THE COMMISSIONER: Thank you very much.  
27 We would like to know that.

28 MR. POLLOCK: Getting back to what you  
29 said, Mr. Simpson, that you don't want to protect these  
30 individuals and let the union be harmed. Now assuming







1 that you can get standard union rates by government decree,  
2 the Collective Bargaining Decree Act, or whatever it is  
3 called in Quebec, and there is no unfair competition  
4 so far as union rates are concerned.

5 MR. SIMPSON: I don't know if those  
6 union decrees -- I think they probably just cover wages.  
7 They don't cover other employment benefits.

8 MR. POLLOCK: Assume you can figure into  
9 the wage package some of the employment benefits. I was  
10 advised that in the construction industry there are very  
11 few fringe benefits other than the raw wage.

12 MR. SIMPSON: There used to be. But  
13 that does not mean that, in the new set of negotiations,  
14 the unions are not seeking more benefits. I would say,  
15 in the last 3 or 4 years that there has been a tremendous  
16 improvement as far as fringe benefits are concerned,  
17 because they have been in a better bargaining position  
18 to get them, so they have gone after them.

19 MR. POLLOCK: What kind of fringe benefits

20 MR. SIMPSON: Supplementary unemployment  
21 benefits, which is a serious thing for the seasonal  
22 worker.

23 MR. POLLOCK: Apart from S.U.B., what  
24 else is there?

25 MR. MARTIN: We have 46 cents, in my own  
26 contract, which covers pension, Ontario Hospital, medical  
27 plan and S.U.B.

28 MR. POLLOCK: What union?

29 MR. MARTIN: Plumbers.

30 MR. POLLOCK: You are organized at a





1 much higher degree than anybody else, so you have got  
2 continuity of service that does not exist in the other  
3 unions. Isn't there more demand for plumbers today  
4 than for labourers?

5 MR. MARTIN: If there is no place for  
6 them, there is no place for plumbers.

7 MR. POLLOCK: There is certainly a place  
8 for them -- as well, assuming we can reflect that as  
9 well, does that solve the problem?

10 MR. SIMPSON: Assuming you can have  
11 decrees enforced by the government which would standard-  
12 ize wages and working conditions?

13 MR. POLLOCK: No, assuming that you get  
14 a decree that says "In this particular industry the  
15 rate shall be X dollars", and that is the rate that is  
16 averaged amongst all the other collective agreements?

17 MR. KOBRYN: Are you saying -- we have  
18 had experience with various government acts. They are  
19 there but the enforcement is pitiful.

20 MR. MARTIN: The Industrial Standards  
21 is the wage rate.

22 MR. KOBRYN: This is our experience on  
23 the enforcement of them.

24 MR. POLLOCK: Assuming that there is --  
25 you can't enforce the agreement, first of all, if the  
26 people are not going to work for that rate. You cannot  
27 police them. You cannot even police your own collective  
28 agreements to make sure that the people are not taking  
29 less money home than is provided in the agreement. If  
30 they feel that there is some advantage to them to accept







1 a lower payment than the collective agreement says, they  
2 accept the lower payment. That came out in the Golden-  
3 berg Commission.

4 MR. KOBRYN: Among unionized people?

5 MR. POLLOCK: Yes.

6 MR. MAIN: This also happens under the  
7 schedules we have under the Industrial Standards Act,  
8 which is a law, and some people still are prepared for  
9 reasons best known to themselves, to work for less than  
10 what the schedule, under the Industrial Standards Act  
11 says they should get.

12 MR. POLLOCK: On the surface of it, you  
13 are eliminating the competition -- wage costs. You have  
14 covered that hurdle without having to resort to recog-  
15 nition picketing.

16 MR. SIMPSON: It may go so far, but  
17 personally, I don't think I would be in favour of it.  
18 We already have the Industrial Standards Act.

19 MR. POLLOCK: But they are not the col-  
20 lective bargaining wage rates, are they?

21 MR. KOBRYN: Yes, they are, if they are  
22 kept up to date.

23 MR. SIMPSON: Theoretically they are  
24 supposed to be. My understanding is that the problem  
25 there is one of enforcement. I don't think employers  
26 who are outside of the bargaining relationship, should  
27 be able to take advantage of the negotiated rate as between  
28 organized employers and organized employees.

29 MR. POLLOCK: You don't really care too  
30 much about the individual. The moral matters at this





1 end of the table and at this end of the table, apart  
2 from preventing your own ox being gored, you don't really  
3 care too much, is that right?

4 MR. SIMPSON: I don't understand your  
5 reasoning there. Personally, it just doesn't sound right  
6 to me that the organized employers and the organized  
7 employees should bear the burden of negotiating the cost  
8 factor, and then have these passed on, as it were, by  
9 government decree against other employers at the cost  
10 of the organized employers and organized employees.

11 MR. POLLOCK: It is no additional cost  
12 to them. They are getting their rates of wages and  
13 somebody else is saying ---

14 MR. SIMPSON: No, because you are then  
15 negotiating for a lot of people who are not even at the  
16 bargaining table. When you sit down to negotiate, you  
17 know that whatever rate you negotiate is going to affect  
18 everyone in that industry.

19 MR. POLLOCK: It doesn't hurt you at all?

20 MR. SIMPSON: From the point of view  
21 of the persons who are unorganized, of course, they don't  
22 have any say as far as the rates are concerned.

23 MR. POLLOCK: If they want to say it,  
24 then they can get organized. That is what I am saying  
25 to you.

26 MR. SIMPSON: I say that our approach  
27 is more in keeping with the, shall we say, system of  
28 competition which exists today. I said at the very  
29 beginning that I did not believe that, no matter whether  
30 or not we got the changes that we wanted, if we got the





1 right to peaceful picketing, there would still be an  
2 area in construction that would be carried on by non-  
3 union employers with non-union employees.

4 THE COMMISSIONER: How do you explain  
5 that? Why should there be where at least you consider  
6 that the organization of men -- and I don't think there  
7 is very much in question about it -- that it is a very  
8 desirable thing.

9 MR. SIMPSON: Because a very small minority  
10 of the population may want to work under these conditions.

11 THE COMMISSIONER: What would you say  
12 regarding organized labour and that small minority?  
13 Would you tolerate it?

14 MR. SIMPSON: If we couldn't organize  
15 it, we would almost have to tolerate it.

16 THE COMMISSIONER: Well, accept it as  
17 something like of nuisance value, or something like that.

18 MR. SIMPSON: Almost.

19 THE COMMISSIONER: Well, that is the same  
20 question as the individual who wants to work.

21 MR. SIMPSON: We are not asking for 100  
22 per cent organization; we are asking for an opportunity  
23 to organize effectively in the construction industry.  
24 We are not asking for absolute organization or absolute  
25 representation among 100 per cent of all employees. We  
26 just want a chance to get at them, that is all.

27 THE COMMISSIONER: But the difficulty  
28 there is you overlap your own interest, you overlap  
29 other interests and I think that is the sticky point.  
30 Instead of holding up the work of plastering, you are







1 holding up the total work of construction. That is what  
2 is urged against you.

3 MR. SIMPSON: Then I think you have to  
4 weigh that against the competing interests involved.

5 THE COMMISSIONER: Oh, yes, you say you  
6 have to. I must confess I have a strong disinclination  
7 to use the same words that you did, this competing  
8 business. There are alternatives. There are other  
9 factors at work at the same time and they work in parallel  
10 lines but I guess, today, we must say they are competi-  
11 tive, inanimate competitors.

12 I was just thinking about the information  
13 that you are going to give to us. Is there any possib-  
14 ility of giving an estimate of the number of hours that  
15 are worked in the course of a year by these men?

16 MR. KOBRYN: I think it was based on  
17 the number of hours. Whether I can get the number of  
18 hours, I don't know.

19 THE COMMISSIONER: If you can, I wish  
20 you would.

21 MR. KOBRYN: You mean their gross wages  
22 or the number of hours on a particular home?

23 THE COMMISSIONER: No, the gross wages  
24 for a year and the number of hours for a year.

25 MR. KOBRYN: I can attempt to get that  
26 for you.

27 THE COMMISSIONER: Well, gentlemen, it  
28 is 20 minutes to 1:00. I think we will adjourn until  
29 20 after 2:00.

30 ---At 12:40 p.m., the Hearing adjourned until 2:15 p.m.





1 ---At 2:15 p.m., the Hearing resumed

2 MR. POLLOCK: We were, before lunch,  
3 discussing the question of economic pressure, I guess  
4 that is the word we are using, at the job site and  
5 alternate methods of recognition picketing forces in  
6 the secondary and tertiary picketing or pressure. I  
7 would be interested to have your views on that.

8 MR. SIMPSON: As to whether there are  
9 any alternatives?

10 MR. POLLOCK: Whether the fact ought to  
11 be permitted, whether they are necessary, whether it is  
12 the power of the picket line that prevents other unions  
13 from crossing - I mean that other unions respect, or  
14 whether it is simply the traditional picket line that  
15 prevents people from going through that line to fulfil  
16 the job of the people who are on strike, in essence,  
17 the strike breaker.

18 MR. SIMPSON: We are talking now about  
19 construction and we are out of organizational and  
20 recognition pickets, are we? We are not talking about  
21 picketing that takes place during a lawful strike?

22 MR. POLLOCK: During a lawful strike?

23 MR. SIMPSON: Because there can be  
24 secondary pressures applied there, as you realize, even  
25 in construction.

26 MR. POLLOCK: The problem is a picket  
27 line is a picket line. It doesn't have a sign on it  
28 saying "I am a recognition picket line, respect me for  
29 these purposes".

30 MR. SIMPSON: No.







1 MR. POLLOCK: Picketing, generally, is  
2 a tool used, if you could develop it through the con-  
3 struction industry, first from the residential areas  
4 in all its ramifications and then the general large  
5 construction sites. There are obviously differences  
6 applying there.

7 MR. SIMPSON: In the kind of picketing  
8 that occurs, you mean?

9 MR. POLLOCK: The anti-strike breaking  
10 picket line.

11 MR. SIMPSON: My friend Mr. Martin says  
12 we run into very few picketing situations on industrial  
13 sites because most of the picketing that takes place  
14 takes place in the residential area construction where  
15 the sites are not as large.

16 MR. POLLOCK: Why is that?

17 MR. SIMPSON: Because industrial con-  
18 struction is highly organized. So that basically, where  
19 picketing would take place in the construction industry,  
20 I would think would be, first of all, in the residential  
21 area and, secondly, I would say that the major part of  
22 the picketing takes place to organize an employer for  
23 employees or to gain recognition for the union. The  
24 purpose for which the picket line is put up, obviously  
25 - I am afraid I am going to have to use that word again.

26 THE COMMISSIONER: That phrase, not word.

27 MR. SIMPSON: Economic pressure. I wish  
28 we could think of another word, or phrase, but it is  
29 frankly designed to bring the employer to terms with the  
30 union by exerting a secondary pressure on him; in other





1 words, by having sub-contractors go to him and say "We  
2 cannot get our people to work for us because they refuse  
3 to cross your picket line. We cannot fulfil our part  
4 of the contract" and as you recognize, in construction  
5 there is a very high degree -- people working in a  
6 building, you can have 5 trades working on the same  
7 floor of a building together. So that, in effect, we  
8 could, in some cases stop a job completely. This would  
9 be our purpose in picketing a job, to bring the job to  
10 an end, to bring the project to an end so that the  
11 employer could no longer operate and would come to terms  
12 with us.

13 MR. POLLOCK: Let me stop you there.

14 Assuming there are legitimate contractors and sub-  
15 contractors and owners in the sense that there is an  
16 owner of the land --

17 MR. SIMPSON: In the sense that they are  
18 in this business not for a one-night stand?

19 MR. POLLOCK: Well, an owner. I am an  
20 owner and I own this lot and I want a building built  
21 on it so I go to a general contractor and I say "Build  
22 me a building".

23 MR. SIMPSON: "Make me a match".

24 MR. POLLOCK: That is right. Assuming  
25 what he does in this industry, that is he sub-contracts  
26 all the work, let us say there are 5 unions and he  
27 sub-contracts all the work to these 5 trades, now you  
28 are not organized in, say, one of the trades, let us  
29 call them the cement workers.

30 MR. SIMPSON: Yes.





1 MR. POLLOCK: You can't get the cement  
2 workers to sign up the cards and you can't go through the  
3 certification procedure. So you decide to organize the  
4 cement workers and the method you use is to picket the  
5 premises, causing the carpenters and all the other units  
6 to down tools. They are all employees of other contractors.  
7 Now, in those circumstances, do they have any legitimate  
8 complaint? They say, "I am a union man, I pay my men  
9 the union rate. Why aren't I entitled to continue my  
10 part of the job?".

11 MR. SIMPSON: In other words, why should  
12 they become involved in the dispute? Why should they be  
13 hurt at all?

14 MR. POLLOCK: That is right, "I am paying  
15 the union rate, all my employees are subject to a good  
16 union contract and we are happy."

17 MR. SIMPSON: Well, we deal with some  
18 of the rationale, or we attempt to deal with some of the  
19 rationale, behind secondary pressures in our brief.  
20 Let me put it simply by saying: The rationale would seem  
21 to be this, that if a primary strike is successful, it  
22 is going to hurt other members of the community. As was  
23 set out in the example here, if there is a steel strike  
24 a man who manufactures steel products can be put out of  
25 business if there is a strike. If there is a strike in  
26 the coal industry, a coal supplier can become bankrupt;  
27 in other words, if your primary strike is successful,  
28 you are going to hurt other persons who are not involved  
29 in the dispute in any event.

30 THE COMMISSIONER: Yes, but I would not







1 always carry it to extremes, to bankruptcy or extremes.

2 MR. SIMPSON: But you are going to harm  
3 them materially.

4 MR. POLLOCK: Let us take that rationale  
5 as you explained it in your brief. In those circumstances  
6 they are getting hurt because they are benefiting from  
7 the lower prices that the steel manufacturer is paying  
8 and, therefore, selling his product at a lower price to  
9 the steel assembler. That is the rationale of your brief,  
10 the wide issue.

11 MR. SIMPSON: We say not necessarily that.  
12 We also say that it is almost the foreseeable consequence  
13 of the primary strike that someone else - if you are  
14 successful in the primary strike, then someone else is  
15 going to be hurt.

16 THE COMMISSIONER: If you coordinate  
17 it, of course.

18 MR. SIMPSON: Exactly. This is something  
19 you can foresee. If you extend this reasoning by saying  
20 that if your primary strike cannot succeed without  
21 secondary pressures, which are legitimate, then the  
22 application of those secondary pressures would also  
23 injure a certain segment in a community.

24 THE COMMISSIONER: But in the one case,  
25 in the primary strike, you don't aim at injuring the  
26 outside parties at all, you aim primarily at the employer.  
27 But in the second case you don't injure the employer  
28 except indirectly; your direct action is against the  
29 secondary man and that includes not only his relation  
30 to the primary employer, but all of the other of his





1 business relations.

2 MR. SIMPSON: We suggest the test for  
3 legitimate secondary pressures should be whether or not  
4 they are aimed at the primary strike situation or whether  
5 they are intended to put the secondary employer, as it  
6 were, out of business. If the intention is to put the  
7 secondary employer out of business, then obviously they  
8 are illegitimate. But if you are merely following a  
9 struck product, for example, if you are striking a  
10 manufacturer and you boycott a retailer and picket that  
11 retailer so that the public knows that he is selling your  
12 manufacturer's struck product, then you are not aiming  
13 at that retailer: you are only aiming --

14 THE COMMISSIONER: You can put it in any  
15 form you please but primarily, he is trying to injure  
16 the relation of the primary man, his own employer.

17 MR. SIMPSON: That is right.

18 THE COMMISSIONER: It would be absurd  
19 for him, he has no occasion for him to aim his venom  
20 at the secondary man except insofar as he wants to get  
21 rid of that relationship between the secondary and the  
22 primary.

23 MR. SIMPSON: Yes, to help his primary  
24 situation.

25 THE COMMISSIONER: But in doing that, in  
26 injuring him in relation to the first employer, he is  
27 equally injuring him in relation to all of his other  
28 possible business associates.

29 MR. SIMPSON: We say the rationale behind  
30 that is the same as the rationale behind the successful







1 primary strike: If no secondary pressures were applied,  
2 you are still going to hurt people. If secondary pressures  
3 are applied, you are also going to hurt people.

4 THE COMMISSIONER: You do that indirectly  
5 and the other you do directly.

6 MR. SIMPSON: I say they are both fore-  
7 seeable consequences of a strike.

8 THE COMMISSIONER: It is if you assume  
9 that one of the weapons that lie at hand and will be  
10 caught up, is the secondary picket line, well of course,  
11 that is foreseeable. But the question is, have you any  
12 right to destroy a second man by injuring him in the  
13 whole circle of his relationships because you want him  
14 to stop dealing with A?

15 MR. POLLOCK: You see, your argument  
16 that is set out here is the argument - and I appreciate  
17 that argument - that says, "We have got a primary dispute,  
18 we are going to go against either the supplier or the  
19 outlet of the place where we have the primary dispute  
20 and we are going to say, as is the only type of secondary  
21 picketing permitted in the United States 'Don't buy  
22 products from this man, buy products B, C, D or E, because  
23 they are good products'". But that is altogether dif-  
24 ferent from your situation on the construction site where  
25 sub-contractor A, the plasterers sub-contractor, has  
26 absolutely no relationship to the other sub-contractor,  
27 he is not depending on him for any of his market, he is  
28 not buying any of his products; he just happens to be  
29 trapped under the same general contractor. Now, are  
30 you saying you can put that man out of business so that





1 he will then exert pressure on the primary contractor,  
2 because that type of thing is prohibited in the United  
3 States?

4 MR. SIMPSON: I will answer that ques-  
5 tion but Mr. Kobryn wants to say something first.

6 MR. KOBRYN: You say if you have one  
7 non-union sub-contractor on a job and the rest are union,  
8 and you say the rest are actually neutral people on this  
9 project, basically, none of them are neutral because they  
10 all belong to an employer's association, either the  
11 sub-contractors Employers' Association or the main  
12 contractors Employers' Association and they are also  
13 people who do cement finishing. These contractors are  
14 definitely very interested to see that every contractor  
15 on that job is union because on this particular job it  
16 will be a cement mixing contractor who is not union,  
17 and if they do nothing to eliminate this competition,  
18 then on the next union job it could be an electrical  
19 contractor and this could spread. So, none of these  
20 fellows are neutral, they have everything to gain and  
21 nothing to lose because they are all involved because  
22 they are all part of the same employers' organization.  
23 When the standards and working conditions and wages  
24 and everything else that are set with the employers'  
25 organization, whether through their sub-section or  
26 through the main section, they are all directly involved  
27 and they all want to see that members of that Associa-  
28 tion, are employed so it is not a neutral position.

29 MR. POLLOCK: If that is the case you  
30 don't need any picket line at all because these





1 people want to get rid of this non-union sub-contractor  
2 as well.

3 MR. KOBRYN: Yes, but as the Act reads  
4 right now, if the employees do not go to work without  
5 a picket line, then the contractor, whether he could  
6 be forced by someone else to take you into the courts  
7 and declare it illegal....

8 MR. POLLOCK: But the purpose of your  
9 picket line in these circumstances is to put the pressure  
10 on the sub-contractor to put the pressure on the other  
11 sub-contractor, and the way you put the pressure on  
12 the first sub-contractor is by withdrawing his employees.  
13 You don't have to put pressure if what you say, there  
14 is this great unity of interest, because they are just  
15 as happy to get rid of the non-union sub-contractors  
16 as the union is, and therefore, you don't need that  
17 pressure. You don't have to withdraw that. They will  
18 put the pressure on themselves. But, that is not  
19 the case. This does not happen.

20 MR. MARTIN: You say there is an  
21 imposition put on the one fellow. He is a union con-  
22 tractor and he is losing his men. Nobody can be pro-  
23 tected all through their lives. This man went into a  
24 job knowing they were non-union people.

25 MR. POLLOCK: He has no choice. He  
26 puts a bid on it, he tenders on it.

27 MR. MARTIN: And when he took the job  
28 if he wanted to be completely free of a non-union  
29 interruption on the job, he could have inquired from  
30 the general contractor or the owner whether the job was







1 going to be union under the contract, or not. In many,  
2 many cases it comes out where it says that union con-  
3 ditions shall prevail. Now, if he wants to go in on  
4 a gamble that there will be no trouble on that job,  
5 then fine and dandy, but if there is somebody on that  
6 job who is non-union and he knows the man he is dealing  
7 with, because they just don't come out of thin air and  
8 submit a price without knowing the fellow's reputa-  
9 tion, especially financially, so there is an element  
10 of risk here in his business, the same as if you go  
11 outside without a coat when it rains, you will get wet.  
12 He is bidding into that job and he is gambling that  
13 there are no non-union subs, or he is aware there is  
14 not going to be and he hopes nothing will happen until  
15 he is out of there.

16 THE COMMISSIONER: But you can't see  
17 every element of risk and say "There is a justification  
18 for our instrument to be brought into play". It is a  
19 question of degree of influence. It is a question of  
20 the character, of the coercion, I will call it that,  
21 and economic pressure.

22 MR. MARTIN: But this contractor bids  
23 only to union work if he wants to be protected.

24 MR. POLLOCK: Then why not let the  
25 union member take the same risk and let him say, "All  
26 right, you don't have to work on those non-union projects  
27 Just keep your labour away from there, don't work for  
28 a non-union".

29 MR. MARTIN: At this stage it has been  
30 indicated many, many times it is a violation of our





1 contract.

2 MR. POLLOCK: Why?

3 MR. MARTIN: Because the moment we  
4 withdraw forces under any form ---

5 MR. POLLOCK: They don't have to with-  
6 draw the forces. They just don't go to work there.

7 MR. MARTIN: What is that?

8 MR. POLLOCK: That is the same thing  
9 you are saying. You are saying to the union contractor,  
10 "Don't tender on those agreements. Don't do business  
11 with them." I am saying to you, the union man, "Don't  
12 work there".

13 MR. MARTIN: But we accept this, and if  
14 we go to work there and there is a problem, we accept  
15 the fact that we will honour that picket line. We  
16 accept this.

17 MR. POLLOCK: We are on a different  
18 wave length.

19 MR. SIMPSON: I think what Mr. Martin  
20 was saying was that anybody who is in the construction  
21 business who bids on a job usually takes steps to inquire  
22 as to whether it is union or non-union. He knows, if  
23 he is in the construction industry and he is an exper-  
24 ienced contractor, that if he is bidding on a job that  
25 is being, shall we say, open to union and non-union,  
26 that he is walking into a situation which could explode  
27 in his face.

28 THE COMMISSIONER: On the other hand,  
29 which can be adjusted by the action of the union itself,  
30 as Mr. Archer illustrated. They draw a line around and







1 isolate the offending member and leave it with him. You  
2 want to include the whole thing and affect much more  
3 than what really lies in your interest.

4 MR. SIMPSON: We feel that unless we  
5 can affect other sub-contractors we cannot bring any  
6 pressure to bear on the person with whom we have a dis-  
7 pute. We cannot exert any kind of pressure that would  
8 bring about any kind of compulsion on him to sit down  
9 and bargain with us or to recognize us. I think one  
10 of the problems here is that there is such a thing as  
11 a job which can be union and non-union. This creates  
12 a rather anomolous situation where you have highly  
13 organized union personnel working with highly organized  
14 non-union personnel working on the same job.

15 THE COMMISSIONER: Have you any of  
16 those in existence?

17 MR. POLLOCK: Highly organized, non-union  
18 personnel -- what does that mean?

19 MR. SIMPSON: I said before, some of  
20 them have very special skills and because of that they  
21 are highly organized. I am going to say electricians,  
22 for example. I would say that about 95 per cent or 90  
23 per cent of the electricians who work in construction  
24 are represented by the union, and they are always required  
25 on any job. Or, the elevator operators is another  
26 example on the high-rise construction. They are always  
27 being put in a position where they are going to be work-  
28 ing beside the example of the concrete form men.

29 MR. POLLOCK: But those men are not  
30 certified for this job site.





1 MR. SIMPSON: You mean the electricians?

2 MR. POLLOCK: Yes, they are all members  
3 of this union.

4 MR. SIMPSON: They are members of the  
5 union and the sub-contractor is a member of the electrical  
6 exchange and they have an agreement with each other.

7 MR. POLLOCK: Not to work on non-union  
8 work?

9 MR. SIMPSON: I think one of the aspects  
10 of the problem ---

11 MR. MARTIN: No, they have no agreement  
12 there.

13 MR. POLLOCK: They work on non-union  
14 jobs too?

15 MR. MARTIN: Yes.

16 MR. SIMPSON: They have to because if  
17 they withdraw from a non-union job then they are in  
18 breach of their collective agreement with their employer.

19 MR. POLLOCK: Which employer?

20 MR. SIMPSON: With the sub-contractor,  
21 the electrical sub-contractor.

22 MR. POLLOCK: The member of this associa-  
23 tion?

24 MR. SIMPSON: Right. We have tried to  
25 negotiate an agreement with our electrical sub-contractors  
26 saying that we will only work on union jobs and that  
27 has always been rejected by contractors. We cannot get  
28 that written into a collective agreement, and his usual  
29 reply is "I will try to bid only on union jobs but I  
30 cannot help it if I find out a job is non-union afterwards."





1 So, we cannot get this written into our agreement. You  
2 get a very anomolous situation where you could even  
3 have a non-union carpenter working beside a union carp-  
4 enter on the same job.

5 THE COMMISSIONER: But on the basis  
6 of that assumption, you are really bound not to create  
7 an obstacle to work being carried on by union and non-  
8 union men. You know when you go into this, and when  
9 you try to put up a picket line, that this is a place  
10 where unionists and non-unionists are working together  
11 all in the interest of giving work and giving wages to  
12 people. Then you turn around and really you violate  
13 that implied understanding by setting up a picket line.

14 MR. MARTIN: Not if a non-union man  
15 wishes to become a union member.

16 THE COMMISSIONER: Now, it was said  
17 here this morning, and the mode of growth was illustrated  
18 how you could really get a non-unionized contractor:  
19 Are there many around this province? Do you have many  
20 contracts where you have union and non-union men working  
21 together?

22 MR. SIMPSON: I would say that in  
23 residential construction you have very many.

24 THE COMMISSIONER: Very many?

25 MR. SIMPSON: Because, as I said before,  
26 there are some employees who are always organized and  
27 who are always required at the construction site --  
28 electricians, for example, and plumbers.

29 THE COMMISSIONER: Then, your unorganized,  
30 essentially, do the rough work?







1 MR. SIMPSON: In some cases, but what  
2 I was saying before, sometimes you get persons of the  
3 same craft working on the same job, one union and another  
4 non-union.

5 THE COMMISSIONER: Is it really a sub-  
6 stantial matter of interest to the union that that has  
7 persisted to this day?

8 MR. SIMPSON: It is in the sense that  
9 I don't think the carpenter who is working at union  
10 wages wants to see another carpenter at the same project  
11 working beside him, working for wages which are less,  
12 because he knows immediately that this man is working  
13 against him.

14 THE COMMISSIONER: Working against him?

15 MR. SIMPSON: Well, he is bringing down  
16 his standards.

17 THE COMMISSIONER: Well, now look, we  
18 discussed that this morning. It was suggested there is  
19 a moral obligation. Well, I would not stress that too  
20 far. I think morality gives away to money interest in  
21 this present age of human beings.

22 MR. SIMPSON: Yes.

23 THE COMMISSIONER: I would put it on the  
24 reality, rather, and one man is getting \$4 and the other  
25 is \$2: Why should the \$4 man be concerned to bring that  
26 other man up? He is not looking upon this man as his  
27 brother. He is looking upon him as his competitor. But  
28 why should he be allowed to raise the question that may  
29 throw that man off the work?

30 MR. SIMPSON: Because I think, in the





1 long run he knows that man will bring his own wages down.

2 THE COMMISSIONER: Can you demonstrate  
3 that by actual occurrences of that nature? Can you  
4 give one case in which that has happened, over a period,  
5 a reasonable period of time? Has not the opposite been  
6 the case, that the lower wages have risen to the upper?

7 MR. SIMPSON: This is partly due, I  
8 think, to the pressure of organization by the trade  
9 unions themselves.

10 THE COMMISSIONER: I daresay.

11 MR. SIMPSON: If they did not exert the  
12 pressure then I am sure -- I would not say the opposite  
13 would result, but certainly the wages and working condi-  
14 tions cannot be maintained unless the unions police them.

15 THE COMMISSIONER: Let us admit that.  
16 I daresay that is the truth. But it results in the  
17 raising of the wages and therefore, it minimizes the  
18 difference between them, and finally, those wages, they  
19 will become uniform and there will be no difference, but  
20 still you want him to join the union. What is the  
21 interest in the union now that insists upon gathering  
22 in every man? I ask that as a matter of interest.

23 MR. SIMPSON: I think it is the interest  
24 in having standard wages and working conditions.

25 THE COMMISSIONER: But you have that  
26 now. I am assuming that you have that. But still you  
27 have the individual who says "I don't want to be  
28 associated with other men. I want to be an individualist.  
29 I believe in individualism" which, you know, is the  
30 basis of what you call competition and industrial







1 organization. It is the individual you are taking as  
2 the little kingdom to be respected, and yet you want to  
3 destroy him.

4 MR. SIMPSON: We don't want to destroy  
5 him --

6 THE COMMISSIONER: Well, what do you  
7 want to do to him? Just let me finish. You want to  
8 make him do an act which is repugnant to him. Why?

9 MR. SIMPSON: I would say that we want  
10 an opportunity to organize an industry where organiza-  
11 tionally we are at a terrific disadvantage as against  
12 a trade union that is seeking to apply for a certificate  
13 in an industrial plant.

14 THE COMMISSIONER: No doubt, that is  
15 the nature of your industry.

16 MR. SIMPSON: The nature of our industry  
17 says that because of the conditions in construction, we  
18 are not even given an opportunity to try to persuade  
19 this rugged individual to join us. If we were given the  
20 opportunity to ask him to join us and he said, "I am  
21 sorry, I am sticking it out alone, I don't want to be  
22 in the union" then fine, he has made the decision. But  
23 what we are saying is that we don't even get an oppor-  
24 tunity to be able to persuade him.

25 THE COMMISSIONER: You have not got an  
26 opportunity to injure innocent people in order to get  
27 that fact into his head but you have every other oppor-  
28 tunity. He knows exactly what you have in mind but he  
29 may be an obstinate person, he may have no rational  
30 reason for objecting but it is his whim, it is his humour





1 and yet you say, "No, we won't tolerate that. You have  
2 got to come in with us and be a good fellow and obey  
3 the rules".

4 MR. MARTIN: It is the majority.

5 THE COMMISSIONER: Of course it is the  
6 majority and what can be more offensive than the arrogance  
7 of a majority?

8 MR. MARTIN: I am afraid it is the  
9 systems we live under, sir.

10 THE COMMISSIONER: It is, I agree, but  
11 it is all right to have the strength of a giant but it  
12 is all wrong to use that strength like a giant.

13 MR. SIMPSON: I think the individual that  
14 you are talking about in the construction industry, if  
15 I may say so, sir, is a fiction. I don't think that the  
16 persons we are talking about who remain unorganized,  
17 have the same reason or the same ability to reason that  
18 makes them decide that they are going to be rugged  
19 individuals and stand on their own and choose their  
20 own working conditions rather than have it imposed upon  
21 them by the union.

22 THE COMMISSIONER: I would agree --

23 MR. SIMPSON: I think the choice is  
24 taken away from them.

25 THE COMMISSIONER: I would agree simply  
26 in the group which you describe, the labour group, the  
27 lowest grade, they are not trained, they are not required  
28 to show high skill or even moderate skill. They do the  
29 work that formerly was done by a pick and shovel, maybe  
30 mixing the concrete, maybe putting in the water or the





1 cement or whatever it might be. But when you begin to  
2 approach the skills that are required, then you do enter  
3 that area in which you may get the few occasional,  
4 individualists.

5 MR. SIMPSON: Yes, I agree.

6 THE COMMISSIONER: I must say I think  
7 the general sympathy for people who take these matters  
8 objectively is to sympathize with those people. He has  
9 a right to live on this earth as well as the collectivists.

10 MR. SIMPSON: I will grant you his right,  
11 sir, but I would say that his right, if he is a real  
12 person and if he exists in construction, should not be  
13 paramount to the right --

14 THE COMMISSIONER: Of course he is not  
15 paramount and in many cases he is compelled to pay the  
16 union for what he gets but he says "I don't want a  
17 certain degree of personal association". It might be  
18 pure whim, I agree, but he is a human being, he may be  
19 a first class citizen, he may support the union as an  
20 instrument but some way or other, he would like to support  
21 you with a bit of aloofness. That is the kind of man,  
22 I think, you may have trouble with. But it is not vital,  
23 it is not a substantial trouble. You don't have many  
24 of them. Your weakness is in the larger class of men  
25 who go from one job to the other with no special require-  
26 ment or qualification.

27 MR. SIMPSON: Yes.

28 MR. KOBRYN: The trouble we have is where  
29 the contractor brings the immigrant over, pays his  
30 passage over to this country and this fellow is obligated







1 to work under any conditions prescribed for him and this  
2 has happened time and time again.

3 THE COMMISSIONER: I was wondering. I  
4 was going to ask you that. How many of those contractors  
5 do you find, say, in this province who work, as it was  
6 said, with unorganized non-union men.

7 MR. SIMPSON: I think Mr. Main could  
8 perhaps give us some information on that.

9 THE COMMISSIONER: What is the extent of  
10 the presence of that contracting group?

11 MR. POLLOCK: People who use the so-called  
12 coolie labour.

13 MR. MAIN: If I start an argument, I  
14 don't mind following through, but I don't like somebody  
15 else to start an argument and then throw it to me to give  
16 the answers. Was the question how many contractors are  
17 there that import labour?

18 MR. MARTIN: Is it prevalent?

19 MR. SIMPSON: Are the same conditions  
20 that we have been describing, do they exist in Toronto  
21 today in the construction industry?

22 MR. MAIN: Well, let me say this, that  
23 in 1960 and 1961 there were a number of briefs presented  
24 to Mr. Goldenberg in those days on this particular  
25 situation where the contractor imported his labour.  
26 They might even be uncles or brothers or cousins or  
27 nephews and they came and they worked for him. In lots  
28 of cases they only spoke their native language, they  
29 were not able to communicate with other people. In those  
30 days it was indicated that if they sort of rebelled,





1 there was always this threat hovering over them "You  
2 rebel and you will go back where you came from". This  
3 apparently was quite prevalent in 1960 and 1961. How  
4 much of this prevails right at this moment, I will be  
5 quite honest and say I don't know, but I presume there  
6 is certainly a certain amount of it goes on.

7 THE COMMISSIONER: Is it so substantial  
8 that really it ought to be taken up as a sort of major  
9 subject?

10 MR. MAIN: Well, taken up as a major  
11 subject, I don't know whether we should or not. All I  
12 am interested in is being able to, through the picket  
13 line, be allowed to endeavour to organize the construc-  
14 tion projects that are partially union and partially  
15 non-union without having to go through the processes of  
16 the Ontario Labour Relations Board which, for reasons  
17 which I explained this morning, are away beyond us.

18 THE COMMISSIONER: You make that clear.  
19 I can see what you have in mind.

20 MR. MAIN: It is simply this, that if,  
21 on a particular construction project we have, just for  
22 the sake of argument, let us say there are 8 sub-  
23 contractors on the job and we won't say what kind they  
24 are, but there are 8 sub-contractors on the job and 5 of  
25 them are union sub-contractors and the other three are  
26 non-union sub-contractors. The union representatives  
27 have probably approached the employees of the three non-  
28 union sub-contractors and endeavoured to have them sign  
29 cards and so on with a view to applying for certification.  
30 But what the union representatives are all faced with







1 is "Well, if I sign a card the word is going to get out  
2 and I am going to lose my job. I would like to be in  
3 the union, I would like to get union rates and conditions  
4 but if I sign a card somebody is going to tell and I  
5 am going to lose my job because I signed a card to join  
6 the union". And usually, we go from home to home, we  
7 knock on doors, we don't always go to the job site.  
8 We will sometimes manage to get the names and addresses  
9 and we will go to their homes and we tell them the  
10 benefits that can be derived from them being a member  
11 of the appropriate union and in lots of cases, "Oh, no,  
12 if I sign the card somebody will find out". So we have  
13 to guarantee the man that he can make application to  
14 join the union and we guarantee him that nobody will  
15 know. On this basis, on quite a number of occasions,  
16 they say "Fine and dandy". In lots of other cases they  
17 say "Look, there are lots of union men working on that  
18 job and we know there have been other instances where  
19 you people, knowing that we want to be organized, will  
20 place a picket line on the project, all of the union  
21 men on the job will refuse to cross the picket line  
22 which means that the project is closed down and then our  
23 contractor will be forced to sign an agreement giving  
24 us union rates and conditions". And they, in lots of  
25 instances, rather ~~than~~ them signing an application and  
26 getting involved, would sooner stay uninvolved until  
27 the contractor tells them "Well fellows, I have to pay  
28 you union rates and conditions and you have to join the  
29 union" and they say, "Oh, well, fine".

30 THE COMMISSIONER: But if they join the





1 union, are they permitted to work at less than union  
2 rates?

3 MR. MAIN: Are they permitted to work  
4 at less remuneration?

5 THE COMMISSIONER: Yes, they are getting  
6 less than union rates at the moment and they join the  
7 union, they sign a card. What do they do about their  
8 wages? Do they have to go to their man and say, "Now  
9 I belong to the union. I demand \$4 an hour" or whatever  
10 it may be?

11 MR. SIMPSON: They can't do anything  
12 until we have negotiated a collective agreement on their  
13 behalf.

14 THE COMMISSIONER: Would you allow them  
15 to work alongside union men and receive half as much as  
16 the union man is receiving?

17 MR. MARTIN: Until such time as the  
18 contract is negotiated, the rates will remain because  
19 we have agreed to nothing as yet.

20 MR. MAIN: We are going too fast right  
21 now.

22 THE COMMISSIONER: I thought we were going  
23 too slow.

24 MR. MAIN: I would like for me to under-  
25 stand where we are going. A man signs a card. Well,  
26 we are talking about organizing a sub-contractor --

27 THE COMMISSIONER: But that makes him  
28 a member of the union, doesn't it?

29 MR. MAIN: No. Right now, in order to  
30 go to the Ontario Labour Relations Board and ask to be





1 certified as the bargaining agent for a group of employees,  
2 all they have to pay is \$1.

3 MR. POLLOCK: They become a member of  
4 the unit, that is the evidence of their membership.

5 THE COMMISSIONER: That is exactly what  
6 I put to you, he becomes a member of the union.

7 MR. MAIN: Yes.

8 THE COMMISSIONER: As a member of the  
9 union, is he entitled to continue to work at less than  
10 union rates?

11 MR. MAIN: Until we get certified on  
12 his behalf.

13 THE COMMISSIONER: Never mind that, answer  
14 the question.

15 MR. MAIN: Of course he continues to  
16 work for the rates and conditions.

17 THE COMMISSIONER: That is all I wanted  
18 to know.

19 MR. MAIN: Oh, I thought this was common  
20 knowledge.

21 THE COMMISSIONER: So you can have union  
22 men who aren't bound by the standard rate fixed by the  
23 union.

24 MR. MAIN: Yes.

25 THE COMMISSIONER: That is getting into  
26 facts, that is all I want. And when you get into a  
27 position where you are certified, you say "We want an  
28 agreement in which these rates will be raised".

29 MR. MAIN: Once the union is certified,  
30 then the contractor is obligated to sit down and talk to







1    them and they say "Here are the union rates and conditions".

2                   THE COMMISSIONER:    I don't know why a  
3    simple thing like that can't be stated at the outset.

4                   MR. MARTIN:    I think, Mr. Chairman, we  
5    are speaking from a very broad-minded union approach  
6    and, at the same time, we here sit and wonder just what  
7    your question means because you are using a legalistic  
8    approach which you have used over a great number of years.  
9    It was just a matter of trying to interpret both ways.  
10   It was not a matter of withholding anything.

11                  THE COMMISSIONER:   There is nothing  
12   legalistic about whether or not you allow a man to  
13   accept less than union rate when he is a member of the  
14   union.

15                  MR. SIMPSON:    I think they are afraid  
16   of the sound of the question and the answer they may  
17   give.

18                  THE COMMISSIONER:   I should at the  
19   moment, eliminate all this, we are asking all sorts  
20   of questions. That does not indicate any direction,  
21   any direction **or** conviction or anything of that sort  
22   at all. We are trying to get the facts, that is all,  
23   and if you have any that have not come out, let us have  
24   them. We are not afraid of them: We are here to receive  
25   them. I would like to know, and this is my question,  
26   how far is this unorganized and non-unionism effective  
27   in Ontario? It is pretty hard to give a judgment, I  
28   suppose.

29                  MR. MAIN:    How many non-union people  
30   are there in Ontario?





1 THE COMMISSIONER: How many of these  
2 contractors get along with non-union men in the construc-  
3 tion business? Can you give a rough approximation?

4 MR. MAIN: Too many.

5 MR. KOBRYN: It is hard to say because  
6 many spring up over night. All they need is a wheelbarrow  
7 and a pick-up truck and get a contract.

8 THE COMMISSIONER: It is not every Tom,  
9 Dick and Harry who can be a contractor.

10 MR. MARTIN: It is just about that.

11 MR. KOBRYN: There are no specifications  
12 on how much money he has to have, how much equipment he  
13 has to have or anything else to become a contractor.  
14 Many of them, when they go sub-contracting, all they do  
15 is contract for labour, they don't even supply the  
16 materials or the equipment.

17 THE COMMISSIONER: Well, they must have  
18 something about them even to engage in that.

19 MR. KOBRYN: That is why we have so many  
20 bankruptcies in the construction industry because these  
21 guys start over night and in three weeks they are out  
22 of business.

23 THE COMMISSIONER: You may be right but,  
24 in any event, it is hard to give an estimate of any sort?

25 MR. MARTIN: That is right.

26 MR. POLLOCK: Getting back to Mr. Simpson,  
27 when you talk about getting your message to these people,  
28 communicating your idea of ---

29 MR. SIMPSON: The opportunity to try and  
30 persuade them.







1 MR. POLLOCK: Yes, that is right. If  
2 you could segregate that persuasion from the effect on  
3 the other union members refusing to cross the line and,  
4 therefore, causing problems for another contractor who  
5 is in no way related to this other contractor, you might  
6 have a stronger argument, it seems to me. If, for  
7 example, you were really intent on communicating this  
8 information to those rugged individualists on the site,  
9 telling them what you have and of the benefits of union-  
10 ism in the short run and in the long run, and these  
11 things that you can't get to them at their homes and  
12 you can't get to them at the union hall, that you want  
13 to be on the site and handing out pamphlets and things  
14 like that, if you could separate or segregate that element  
15 of the picketing from the element of the picketing which  
16 is objectionable to the other contractors, the stopping  
17 of their employees from crossing the line and indirectly  
18 putting the pressure on this particular contractor, then  
19 I think you would be in not a bad position so far as the  
20 courts are concerned, even with today's laws.

21 MR. SIMPSON: I don't know about to-day's  
22 law, but I don't see how it is possible to separate the  
23 consequences of the picketing at a construction site  
24 where there are so many trades involved, and still exert  
25 some form of economic coercion on the person with whom  
26 you are trying to obtain recognition.

27 MR. POLLOCK: This is not the point. We  
28 are not, at this stage, putting any economic pressure  
29 on anybody. We are just carrying out your desire to  
30 get your point across to these people -- communicating





1 the information to these people.

2 MR. SIMPSON: Yes.

3 MR. POLLOCK: If that does not succeed,  
4 then we will talk about the next step. The difficulty  
5 is, of course, you have put your finger on: How do  
6 you separate it? This is one of the problems the courts  
7 have been looking at for many years. You can't, so  
8 they enjoin all of it. If you say to these people,  
9 "Communicate the information as well that this is not  
10 a picket line in the sense that you are not obligated  
11 to stop; don't treat this as a picket line as is  
12 generally known. It is an information booth", or some-  
13 thing like that where you are giving information to  
14 these employees on the job and telling them of the ad-  
15 vantages of trade unionism.

16 THE COMMISSIONER: I think we have got  
17 to say this, Mr. Simpson ---

18 MR. SIMPSON: Could I, in reply to that  
19 just say this, sir: The facts in construction, unfor-  
20 tunately, influence the effect of the picketing, and  
21 I think any separation that will be imposed will have  
22 to be a highly artificial separation. This has been  
23 recognized not just here but in the United States. The  
24 Taft-Hartley Act in the United States, 1947, prohibits  
25 secondary picketing and secondary boycotts, and there is  
26 a loop-hole of what they call a hot cargo clause in  
27 the collective agreement, providing an employee should  
28 not be required to handle goods of other employers who  
29 are engaged in labour disputes or who have been declared  
30 unfair to organized labour. That loop-hole was closed





1 in what they called the Landrum-Griffin Act of 1959 by  
2 a section that prohibits the execution of hot cargo  
3 agreements. There are two exceptions. The construc-  
4 tion industry is one of them and the garment industry  
5 is another one.

6 THE COMMISSIONER: What book do you  
7 have there?

8 MR. SIMPSON: I am referring to an  
9 article in the Canadian Bar Review, Volume 40, page 61,  
10 1962. It is an article of Professor Carrothers', now  
11 Dean of the Western University Law School on secondary  
12 picketing.

13 That is just recognition of the fact that  
14 I think it would be impossible to make the separation  
15 you are suggesting, Mr. Pollock. I think, theoretically,  
16 it would seem to be on the surface to be fair, if you  
17 could make the separation, but I don't see how it could  
18 be done.

19 THE COMMISSIONER: I think we have  
20 analysed this almost to death, but let me illustrate  
21 that by what took place at the Sault a few days ago.  
22 You will remember, I think, there were about 100 brick-  
23 layers who went on strike. The steelmen, amounting to  
24 7 or 8 thousand, disregarded the line.

25 MR. SIMPSON: Yes.

26 THE COMMISSIONER: The railway men did  
27 respect the line, didn't they?

28 MR. SIMPSON: Yes.

29 THE COMMISSIONER: What did they say  
30 about the company's act, not asking for an injunction?







1 They criticized their company very severely for not  
2 applying to have an injunction to destroy the picket line.  
3 Now, what does that indicate? I'll tell you what it  
4 indicates to me, that the general feeling of men, both  
5 in and out of union, is that that is not within the range  
6 of legitimate pressure or coercion, when you have the  
7 railway union itself objecting to the failure of a company  
8 to obtain an injunction because they stopped at a picket  
9 line which they did not want to stop at, and on the other  
10 hand, you had the 7,000 men disregarding it totally,  
11 then it indicates that there is a sort of rooted objection  
12 to that sort of extension of the picket line, doesn't it?

13 MR. SIMPSON: I may be a little more  
14 cynical than you.

15 THE COMMISSIONER: I am not cynical at  
16 all.

17 MR. SIMPSON: I am cynical.

18 THE COMMISSIONER: You said "more" than I  
19 am.

20 MR. SIMPSON: I always assume everyone  
21 is a little bit cynical. How serious can we take this  
22 statement? That is my first reaction. This may be for  
23 the purpose of public relations, or for another purpose,  
24 because those railwaymen may be out on an illegal work  
25 stoppage. They may be subject to some kind of discipline  
26 by their own employers for doing this.

27 THE COMMISSIONER: Those things are all  
28 possible. I accept them at their face value and you don't.  
29 Perhaps you know more about them than I do.

30 MR. SIMPSON: I know that statements made





1 during the course of a legal strike by a union are usually  
2 very carefully phrased so that they will not involve  
3 them in liability with their own employer.

4 THE COMMISSIONER: But these remarks  
5 were not made by the strikers. These remarks were made  
6 by the railwaymen who were not on strike but who stopped  
7 at the picket line.

8 MR. SIMPSON: They were engaging in,  
9 perhaps, under the terms of their own collective agreement  
10 by refusal to cross that line in an illegal work stoppage.

11 THE COMMISSIONER: I don't know whether  
12 they agreed to that or not, but anyway, that is what  
13 the report was. It may be that that report is simply  
14 something blown up falsely, I don't know.

15 MR. SIMPSON: My second reaction is  
16 that all they are doing is trying to switch the onus  
17 onto the company and away from themselves and saying  
18 "It is your own fault for not getting an injunction".

19 THE COMMISSIONER: I would not attribute  
20 that purpose to it.

21 MR. MARTIN: It could have been one  
22 man's opinion too.

23 MR. SIMPSON: Let's say the Algoma  
24 Steel is an unusual situation. It is not fair to say  
25 there can be a separation.

26 THE COMMISSIONER: How?

27 MR. SIMPSON: The bricklayers are  
28 working on various projects, the steelworkers are  
29 working for Algoma Steel -- I think it is easier to make  
30 the separation there than the separation you are talking







1 about. I would like to hear of the possibility of a  
2 separation, how it would take place.

3 MR. POLLOCK: The railroaders there  
4 work for Algoma too -- they work for Algoma Central.  
5 Let me put this to you: If you said that they can  
6 picket to communicate this information, so long as none  
7 of the other trades refuse to cross the picket line --  
8 leave it up to the union trades to decide whether these  
9 people are going to be permitted to communicate their  
10 information?

11 MR. SIMPSON: You mean have pickets ---

12 MR. POLLOCK: Have these information  
13 people.

14 MR. SIMPSON: Why should anybody refuse  
15 to cross the line if all you want to do is deliver in-  
16 formation?

17 MR. POLLOCK: That's right.

18 MR. SIMPSON: Well, that is not all we  
19 want to do.

20 THE COMMISSIONER: Of course, but why  
21 not say what you want to do instead of covering it with  
22 the word "communicate". What you want to do is to per-  
23 suade.

24 MR. SIMPSON: That is right.

25 MR. MARTIN: That is right.

26 THE COMMISSIONER: Persuade by the coer-  
27 civeness sometimes of mass -- by numbers.

28 MR. SIMPSON: That is right.

29 THE COMMISSIONER: Well, that is a fact,  
30 whether we like it or not.





1 MR. SIMPSON: We are trying to persuade  
2 by exerting some form of pressure -- forget about  
3 economics; let us get rid of that phrase.

4 MR. POLLOCK: On an outside party.

5 MR. SIMPSON: Yes, by using that outside  
6 party.

7 THE COMMISSIONER: Well, we have dealt  
8 with that.

9 MR. KOBRYN: I have a personal experience  
10 in secondary picketing -- separating it. In the London  
11 area, the contractors refused to recognize the iron-  
12 workers who were doing the reinforcing steelwork. We  
13 went to the Council and said, "We are going to put an  
14 informative picket on various contractors that are doing  
15 our work, but we want all trades to cross this picket  
16 line". This was done. We picketed somewhere in the  
17 vicinity of 4 or 5 months. Our pressure on these con-  
18 tractors was bad publicity to their customers by having  
19 these pickets out in front of their jobs. Eventually,  
20 we succeeded in getting recognition for these contractors.

21 MR. POLLOCK: That was certainly,  
22 obviously a legitimate technique and you were not enjoined.

23 MR. KOBRYN: Well, the question arises,  
24 could I have been enjoined?

25 MR. POLLOCK: I suggest, if you could  
26 have been, from the complaints we have heard, you would  
27 have been.

28 MR. MARTIN: We have been enjoined many  
29 times for less, when no men were off the job.

30 MR. MAIN: Could I ask a question: What





1 type of picketing are we talking about? Mass picketing?

2 MR. SIMPSON: No, just picketing.

3 MR. POLLOCK: You don't need mass picket-  
4 ing at a construction site if you are holding back the  
5 other trades. You put a sign out and they wont cross.  
6 I am not telling you anything you don't know.

7 May I ask a question about jurisdictional  
8 disputes?

9 MR. SIMPSON: Well, may I make a few  
10 preliminary statements about that subject?

11 MR. POLLOCK: Fine.

12 MR. SIMPSON: You will notice there is  
13 no reference anywhere in our brief to jurisdictional  
14 disputes. My terms of reference, as far as this brief  
15 is concerned, from this Council, do not include juris-  
16 diction disputes, not because we are trying to avoid  
17 the question completely, but we felt that possibly -  
18 maybe we were wrong - that it was not necessarily  
19 within the terms of reference of the Commission. Any  
20 remarks I make do not come from my instructions as  
21 representing the Council, but I would say, are just  
22 personal remarks.

23 I do not think that any member of the  
24 Council would disagree with this, that we are not sup-  
25 porting picketing to bring about a work assignment in  
26 favour of any particular trade union in a jurisdictional  
27 dispute. The Goldenberg Commission was quite specific  
28 in saying that such strikes and picketing in support  
29 of same were unlawful and should be prohibited. We  
30 agree with this.







1 Now, the next remark is that I think a  
2 lot of the aggravation could be taken out of jurisdic-  
3 tional disputes if the Act was amended as was recommended  
4 in the Goldenberg Commission, so that on a complaint it  
5 was possible for a commission to make a work assignment  
6 in favour of persons who were not necessarily employees  
7 of the employer affected by the jurisdictional dispute.  
8 Now, that was made a recommendation by the Commission but  
9 that has never been implemented.

10 THE COMMISSIONER: Would you mind stating  
11 that again?

12 MR. SIMPSON: The Goldenberg Commission  
13 recommended that the Act be amended, which permitted  
14 a complaint to be made in connection with a jurisdictional  
15 dispute so that the Jurisdictional Dispute Commission,  
16 now the Ontario Labour Relations Board, could make a work  
17 assignment in favour of persons who are not necessarily  
18 employees of the employer who was involved in the juris-  
19 dictional dispute. Right now, the Board may only make  
20 an assignment in favour of a trade union which has a  
21 relationship with the employer who is involved in the  
22 dispute. Because the word "employees" is used and not  
23 the word "persons".

24 MR. POLLOCK: You would say that if the  
25 job was to be done by a sheetmetal worker and this  
26 particular employer only employed lathers and plasterers  
27 and somebody else, that the board ought to be given  
28 jurisdiction to award the sheetmetal work?

29 MR. SIMPSON: Yes, perhaps on the basis  
30 of trade practice, in effect, the Jurisdictional Disputes





1 MR. SIMPSON: Yes, and this gives them  
2 the status to complain about it.

3 THE COMMISSIONER: I see.

4 MR. POLLOCK: Your suggestion is he  
5 ought to engage carpenters to do that type of work?

6 MR. SIMPSON: He ought to engage them  
7 or he ought to agree to go with the carpenters to a  
8 decision-making body if they have agreed on one.

9 THE COMMISSIONER: It introduces, in  
10 effect, the carpenters to that job?

11 MR. SIMPSON: That is right.

12 THE COMMISSIONER: Who weren't there before?

13 MR. SIMPSON: That is right, based on  
14 their agreement with the contractor.

15 THE COMMISSIONER: Quite.

16 MR. SIMPSON: I think the Jurisdictional  
17 Disputes Commission--obviously they arise because of the  
18 introduction into the Canadian market of new building  
19 materials and it is a question of who has the right to  
20 apply it, which trade has the right to apply it. As  
21 you gentlemen know, there are two major decision-making  
22 bodies as far as jurisdictional disputes are concerned.

23 One is the National Joint Board in Washington and the  
24 other one is the commission which is set up under the  
25 Act, which is now part of the Labour Relations Board.

26 MR. POLLOCK: Which one is supreme?

27 MR. SIMPSON: Well, under the new legis-  
28 lation - and the legislation has been amended again -  
29 if the parties have agreed on a forum, then that is the  
30 forum that governs. If the parties have not agreed, then







1 the Ontario Labour Relations Board will make the decision.  
2 We said before, we think they are prevented from making  
3 an effective decision because the Act has to be amended  
4 to include "persons" and not merely "employees".

5 The National Joint Board in Washington  
6 is the forum, because traditionally, it has been the  
7 forum and there are reasons for it being the forum.  
8 One is that most of the building trades unions are  
9 international unions.

10 THE COMMISSIONER: What does that mean,  
11 that the work is going to be stopped by means of a  
12 picket line or a strike until they may have a meeting  
13 over in the United States?

14 MR. SIMPSON: No, usually these decisions  
15 are rendered by telegraph.

16 MR. POLLOCK: If the work continues,  
17 who does the work?

18 MR. MARTIN: On the National Joint Board  
19 there must be no work stoppages and the work will  
20 proceed until it is adjudged and this is usually within  
21 sometimes, 2 or 3 days. When each party is instructed,  
22 then the change is made with no stoppage.

23 THE COMMISSIONER: Well, without an  
24 international union now, what is your suggestion, who  
25 is going to decide that - the Labour Board?

26 MR. SIMPSON: Now the Labour Board does  
27 have jurisdiction where the parties themselves have not  
28 agreed on a forum.

29 THE COMMISSIONER: And if they agree  
30 within Canada that forum would act in the same way as





1 the Washington Board.

2 MR. SIMPSON: That is right. Now, there  
3 are gaps in the legislation. A typical example of  
4 what happens is that someone comes along with a new  
5 building material, introduces it into the Canadian  
6 market, incorporates a new company to manufacture it  
7 and perhaps install it or maybe set up a separate,  
8 corporate subsidiary to install it. Then he shops  
9 around and decides on the trade that he wants to have  
10 a relationship with. Usually this is based on one  
11 factor - not on trade jurisdiction, but on cost. So  
12 that he goes to a union, signs an agreement with them  
13 and then he is all right except for the last month or  
14 last two months of that agreement. Then, during the  
15 term of that collective agreement, he goes out and  
16 attempts to hire, because he requires them, bricklayers,  
17 carpenters, as well as the persons with whom he is  
18 associated in the collective agreement.

19 He is very careful during what we call  
20 the open season, not to hire more than one bricklayer  
21 or more than two bricklayers and not to hire more than  
22 one carpenter or not to hire more than two carpenters  
23 because if he does during the open season, that union  
24 may apply and try to get a certificate. So he tries  
25 to establish a relationship with a union of his choice  
26 and then he cannot be affected by the Jurisdictional  
27 Disputes Commission because they cannot, at the present  
28 time, make an award against him if the members of the  
29 union, in whose favour the award is made, are not his  
30 employees and he has made sure that they are not his





1 employees because the former Jurisdictional Disputes  
2 Commission had held "Sure, you can go out and hire  
3 carpenters but they won't be employees within the mean-  
4 ing of the Act because they are just casually employed".

5 THE COMMISSIONER: Suppose a plumber  
6 permanently employed his own employees?

7 MR. SIMPSON: If they were his own  
8 permanent employees, obviously the commission would  
9 have jurisdiction to make a work assignment and bind  
10 them.

11 THE COMMISSIONER: But what about this  
12 work among unions on a job, is there any question arise?  
13 Suppose he said "I manufacture this and I am going to  
14 put it on. That is part of my work"?

15 MR. POLLOCK: If an electrical assembly  
16 has to be installed by an electrical trade union and  
17 they go in and try to put it up and the electrical union  
18 on the job says "Oh, no you don't, that is our juris-  
19 diction", is that ironed out by the Jurisdictional  
20 Disputes Commission here in Ontario, or in the United  
21 States?

22 MR. SIMPSON: It depends on how it  
23 arises --

24 THE COMMISSIONER: He might say "I am  
25 willing to put my work up. If you want my work,  
26 you have got to take my structural men because I know  
27 how to put it up and I am going to make sure that my  
28 guarantee will be well founded". Suppose he takes  
29 that job - "If you want this, you have got to take  
30 my men". What about the union on that?







1 MR. SIMPSON: I am not so sure I under-  
2 stand the proposition. Are you saying that if the  
3 employer says to you, "Look, this is my product and I  
4 know who I want to install it ...."

5 THE COMMISSIONER: If you buy something  
6 from me that I manufacture

7 MR. POLLOCK: You are the sub-contractor  
8 who is giving me electrical work and you want to install  
9 this electric control panel, the electric control panel  
10 is manufactured by X Company who says "I will give you  
11 a guarantee if my men install it". They are a different  
12 unit. You buy it from this company and they go up to  
13 install it and the electrical union on the job says  
14 "You can't put that in, that is our job".

15 MR. SIMPSON: In other words, how does  
16 the jurisdictional dispute arise? How does it get before  
17 the Board?

18 MR. POLLOCK: How is that resolved?

19 MR. SIMPSON: It depends if there is  
20 an agreement between the electrical union, which wants the  
21 work and the general contractor. Quite often, in  
22 construction --

23 THE COMMISSIONER: Let us assume, even  
24 not, but the contractor wants this particular machine  
25 of mine and I say, "Yes, you take the machine with my  
26 labour, or not at all".

27 MR. POLLOCK: We are getting into the  
28 contracting-out situation as well.

29 MR. SIMPSON: . . . Many of these contracts  
30 contain provisions now which bind the sub-contractor to





1 the same jurisdictional procedures as the general con-  
2 tractor.

3 THE COMMISSIONER: Suppose the main  
4 contractor makes a contract with the company that manu-  
5 factures a certain boiler, it is supreme and the boiler-  
6 maker says "Now I have a corps of men who know this  
7 plan from the top to the bottom and they are the only  
8 people who will put it in," is that interfered with in  
9 any way by the unions?

10 MR. SIMPSON: It could be if that  
11 general contractor has a contract with the plumbers union  
12 and that contract says that he will award any work which  
13 is within the plumber's jurisdiction to plumbers.

14 THE COMMISSIONER: But he can't separate  
15 the work from the machine in this case. He is buying  
16 a machine but he buys the work with it and they can't  
17 separate it. Would that apply in the case of the  
18 ordinary provisions?

19 MR. SIMPSON: Well, all he is doing is  
20 sub-contracting out part of the work.

21 THE COMMISSIONER: He is not sub-contracting  
22 at all. He is buying something that carries with it  
23 certain labour in the nature of installation.

24 MR. SIMPSON: This is what we call sub-  
25 contracting, in our terminology, and again, it depends,  
26 because in many of these contracts now, the general is  
27 usually bound to hire sub-contractors who will go through  
28 the same jurisdictional dispute procedure as he, himself  
29 is fixed with.

30 THE COMMISSIONER: Do you say there is







1 no machinery of a highly technical calibre that doesn't  
2 carry the obligation of allowing the employees of the  
3 seller to install? It may be, but I would be astonished,  
4 if that were so.

5 MR. SIMPSON: In many cases, in your  
6 situation, if it required a high degree of skill to  
7 put in this machine, I would think that the trade union  
8 that properly has that skill would probably have juris-  
9 diction and it would probably, in the case of a boiler,  
10 be someone from - maybe I am going out on a limb, someone  
11 from the plumbers union, and you would not have any  
12 problems in that kind of a situation. I think the  
13 situation commonly arises where you have a new building  
14 material introduced and it can be applied by perhaps  
15 more than one trade.

16 THE COMMISSIONER: Yes, we have had  
17 that.

18 MR. SIMPSON: Where the skills involved  
19 maybe involve more than one trade, so then he shops  
20 around, as I said before, picks on one union and avoids  
21 relationships with the other unions and also avoids an  
22 assignment being made against him.

23 THE COMMISSIONER: I would like to  
24 ask a question about Section 5. It says "Where no trade  
25 union has been certified as bargaining agent of the employ-  
26 ees of an employer in a unit, that a trade union  
27 claims to be appropriate for collective bargaining".  
28 Do you say that that has been interpreted that that  
29 union would include all the employees of an employer  
30 regardless of the geographical location, that is all





1 the employees in the City of Toronto?

2 MR. SIMPSON: I wonder if I could just  
3 have the Act. I am not as familiar with the Act as  
4 I was.

5 THE COMMISSIONER: Page 64.

6 MR. SIMPSON: Section 5?

7 THE COMMISSIONER: Yes.

8 MR. SIMPSON: Well, the unit there in  
9 construction is a geographical unit.

10 THE COMMISSIONER: A single geographical  
11 unit, is it?

12 MR. SIMPSON: Yes.

13 THE COMMISSIONER: What about the ones  
14 you have all over the city?

15 MR. SIMPSON: The Board has established  
16 certain geographical areas in Ontario. They have not  
17 all been defined or established yet but, for instance,  
18 we all know what the Hamilton area consists of, we  
19 know what the Toronto area consists of.

20 THE COMMISSIONER: I remember there  
21 was a case in British Columbia in which the employees  
22 of one restaurant of three owned by a single individual,  
23 I think had joined the union, but the others didn't do  
24 it and there was a picket line and some question arose  
25 anyway.

26 MR. POLLOCK: Mr. Craddock.

27 MR. SIMPSON: Yes, I am familiar with  
28 that case.

29 THE COMMISSIONER: Do you say the  
30 employees had had different geographical areas?





1 MR. SIMPSON: In construction, the unit  
2 is a geographic unit. You are certified according to  
3 a geographical area and the certificate which is given  
4 to you by the Board cannot take you outside that  
5 geographical area.

6 THE COMMISSIONER: I see, all the work  
7 done by those men, the employees within that unit,  
8 constitute a single unit within the meaning of this  
9 section?

10 MR. SIMPSON: Yes.

11 MR. MARTIN: It could be 6 counties.

12 MR. POLLOCK: Of course, once you are  
13 certified with that particular employer, he loses all  
14 his employees and next time he gets some more employees  
15 you are still servicing him.

16 MR. SIMPSON: That is right.

17 THE COMMISSIONER: I was not familiar  
18 with the interpretation of that section.

19 MR. POLLOCK: The geographic area or  
20 unit, I understand, was put in for the benefit of the  
21 construction unions.

22 MR. SIMPSON: Section 92.

23 MR. POLLOCK: It used to be certified  
24 for this address and then all the employees would dis-  
25 appear and that sort of thing.

26 MR. MARTIN: Yes.

27 MR. SIMPSON: Section 90 and following,  
28 was passed as a result of the Goldenberg Commission,  
29 and section 92 deals with bargaining units in the  
30 construction industry by reference to a geographic area.







1 THE COMMISSIONER: Where is that line,  
2 which paragraph?

3 MR. SIMPSON: Section 92, (1), it says:  
4 "Where a trade union applies for  
5 certification as bargaining agent  
6 ..... by reference to a geographical  
7 area, and it shall not confine the  
8 unit to a particular project".

9 THE COMMISSIONER: Thank you. In all  
10 other cases it is confined to a specific location?

11 MR. SIMPSON: Because it makes sense,  
12 because we do not have one place where an employer carries  
13 on in the construction industry. Pigott Construction  
14 has 150 jobs going on right now.

15 MR. POLLOCK: Turning to the injunction  
16 question, which is one of the points raised on page 48  
17 of your brief, the last paragraph on that page:

18 "The fact that the interim injunction  
19 has become the expected labour remedy,  
20 and no longer an extraordinary  
21 equitable procedure, seems  
22 unjustified if irreparable harm  
23 must be proved. After all, there is  
24 usually very little damage which an  
25 employer suffers except loss of  
26 business profits and these are adequately  
27 remedied by a judgment for money  
28 damages. If a supplier breaks a  
29 contract with a retailer, depriving the  
30 latter of business profits, surely





1 the latter cannot obtain an interim  
2 injunction enforcing the contract  
3 on the grounds that his losses are  
4 irreparable. The argument that the  
5 union is not a suable entity can  
6 be met by suing the employees indi-  
7 vidually or, if the union officials  
8 authorize the strike in the course  
9 of the employment, by making the  
10 union a suable entity for purposes  
11 of vicarious liability (as under  
12 the arbitration doctrine in the  
13 Polymer case ... "

14 Are you suggesting that, as a balance for the removal  
15 of the injunction that unions become a suable entity  
16 in the sense that if there be damages suffered unlawfully  
17 by them as a result of either an illegal strike or  
18 illegal action, or something like that has been  
19 established, that they are liable for those damages in  
20 law and that there ought not to be an injunction granted?  
21 Would that be a balance to you?

22 MR. SIMPSON: You mean if the injunction  
23 is taken away, should it make the union suable?

24 MR. POLLOCK: Yes.

25 MR. SIMPSON: No, I am not advocating  
26 they should be suable. I think there are sufficient  
27 remedies available to the employer now through the  
28 arbitration process where the union is a suable entity.  
29 If it is a breach of the collective agreement, damages  
30 can be awarded against it.







1 MR. POLLOCK: Assuming we are not in  
2 the arbitration situation.

3 MR. SIMPSON: Well, as you say, and as  
4 we say in the brief, you can sue the employees individually.  
5 If the union officials authorized the strike in the  
6 course of employment by making the union a suable entity,  
7 on the basis of vicarious liability.

8 MR. POLLOCK: Let us first dispose of  
9 suing the employees individually.

10 MR. SIMPSON: This is a question that  
11 has not, as far as I know, come up for judicial decision.

12 MR. POLLOCK: It is up now.

13 THE COMMISSIONER: They can sue in  
14 Manitoba and they can sue in British Columbia.

15 MR. SIMPSON: Because of the legislation.

16 THE COMMISSIONER: Yes.

17 MR. SIMPSON: In Ontario, as far as I  
18 know, ---

19 MR. POLLOCK: The Rights of Labour Act --  
20 we appreciate that. Now, suing an employee individually:  
21 if you get a judgment of \$200 thousand against an  
22 individual employee or a couple of them, you are not  
23 going to be satisfied. I don't think there are too many  
24 individuals in the construction industry, even union  
25 organizers who make that much money.

26 MR. SIMPSON: I might say even unions  
27 don't collect that much money.

28 MR. POLLOCK: That is right. Assuming  
29 you can't sue employees because they are impecunious,  
30 can you suggest that unions ought to be suable under those





1 circumstances so that you can say to the employer,  
2 "Don't worry about this. We'll get the injunction .  
3 If they cause you damages and you can establish damages,  
4 they will pay them", and in some cases they ought to be  
5 glad to pay them if they have done something wrong, if  
6 there has been a trial.

7 MR. SIMPSON: I don't think that is the  
8 main part of our submission, as far as injunctions are  
9 concerned. We are suggesting that the procedures under  
10 which an injunction is obtained be changed in their  
11 entirety. What you are suggesting is that the quid pro  
12 quo for that is the fact that he should then make the  
13 union suable anyway. If our submissions are well founded,  
14 I could not then see the reason why a union should  
15 become a suable entity.

16 MR. POLLOCK: Because it seems to me  
17 one of the strongest argument that an employer has to  
18 go to the court to get an order to prevent this pro-  
19 spective damage is "I cannot recover even after trial.  
20 If they are permitted to do this damage ---".

21 MR. SIMPSON: He has never tried.

22 MR. POLLOCK: But he can't sue the  
23 union.

24 MR. SIMPSON: On the few cases that did  
25 go to trial and damages were awarded, I think in the  
26 Nipissing Hotel case, damages were awarded. In fact,  
27 I think they were agreed on before the trial --and the  
28 question went on the basis of liability.

29 THE COMMISSIONER: That was against an  
30 individual, not the union.





1 MR. SIMPSON: These people were all  
2 officers of the union.

3 MR. POLLOCK: That is right.

4 THE COMMISSIONER: But they were indi-  
5 viduals.

6 MR. SIMPSON: That is right.

7 MR. POLLOCK: If that is a strong string  
8 in his bow, that he goes to the court and says to them  
9 "You must give me an injunction. You must prevent this  
10 damage" -- it is not the case where a supplier breaks  
11 a contract, because he can be sued. The union can't be  
12 sued. If you say "Don't give the injunction, then be  
13 liable for damages", I think some employers might accept  
14 that and some might not.

15 THE COMMISSIONER: They can't sue in  
16 England. Do you know of any of the considerations  
17 underlying that exemption? What are the social consider-  
18 ations or the economic or the political?

19 MR. SIMPSON: I would only be guessing  
20 on the political considerations ---

21 THE COMMISSIONER: We haven't had occasion  
22 here to examine that very closely.

23 MR. SIMPSON: I think one of the economic  
24 reasons is that if a union was involved in litigation,  
25 you could almost litigate out. If you were big enough  
26 -- and employers are big -- you could almost litigate  
27 out of existence any trade union.

28 THE COMMISSIONER: That would depend  
29 entirely upon the scope of the damage which the union  
30 had brought about.







1 MR. SIMPSON: But you could drag them  
2 into court -- litigation is an expensive procedure

3 THE COMMISSIONER: I am not affected  
4 by the dragging into court. I think it would be decided  
5 on other matters than that. Generally speaking, if you  
6 have a group action that results in damage, there is  
7 responsibility for it but they make an exception,  
8 certainly in England, in the case of a union, and in  
9 this province. I was just wondering whether you had  
10 anything to say on the considerations underlying that

11 MR. SIMPSON: I do not think I am  
12 sufficiently familiar with all the considerations

13 THE COMMISSIONER: Well, that may be

14 MR. POLLOCK: I might say that the same  
15 argument was leveled at the amendment of 1959 in British  
16 Columbia and there has only been one action in 7  $\frac{1}{2}$  years

17 MR. SIMPSON: I think most unions, of  
18 course, would naturally be afraid of being suable now  
19 that they have enjoyed this immunity. Let us face it,  
20 no one wants to become suable if he is not suable now.  
21 Any change in the legislation would require, I would  
22 think, a complete change in political and economic  
23 considerations.

24 THE COMMISSIONER: That would require  
25 much more than an amendment.

26 MR. POLLOCK: It is to repeal one act.

27 MR. SIMPSON: Yes, but it is also to  
28 repeal an immunity that existed under the act for quite  
29 some time. It is not just one act. You are changing  
30 the status of the trade union.





1 THE COMMISSIONER: Yes, but we are  
2 changing everything. It is not merely the union. The  
3 whole society today is being changed. The question is  
4 not what you want to do, but why do you do it? Why do  
5 you exempt the union?

6 MR. POLLOCK: With respect, you are not  
7 changing the status of the union at all. The union  
8 today, in Ontario, is an entity and it has been declared  
9 to be so. You are just not a suable entity because  
10 the Rights of Labour Act prevent it. The Nipissing  
11 Hotel and all those case say that.

12 MR. SIMPSON: I appreciate that but  
13 there must have been a very cogent reason why it was not  
14 a suable entity.

15 THE COMMISSIONER: One reason was that  
16 they adopted the policy in England from the beginning  
17 to leave the labour and management alone, as far as  
18 possible. They have reached the stage today where they  
19 have had to do more than almost any other country in  
20 the world, by fixing wages, almost fixing dividends and  
21 giving an undertaking. So, these changes are bringing  
22 about differences of attitude, necessarily.

23 MR. SIMPSON: I don't know if the change  
24 in the status to make a union a suable entity is going  
25 to make any real difference to the basic problems of  
26 labour relations.

27 THE COMMISSIONER: Oh, that may be,  
28 but in some cases where there is stupid destruction  
29 of property, and the question arises, why should not  
30 the union pay for it? Why should not they all pay for







1 it? Why should it be limited to a few officers or  
2 something like that? I have in mind such action as  
3 occurred at the Ford Plant some years ago where the  
4 damages caused by refusal to allow men to look after  
5 the heating in the winter resulted in damage of \$200  
6 thousand. Why should not the union pay for that? It's  
7 part of their -- I would not call it economic coercion  
8 -- but physical coercion on the company. It was a  
9 stupid thing; we all agree to that -- to destroy the  
10 real means of their own livelihood, but they did it.  
11 Why shouldn't they pay for it? That is the question.  
12 I think the non-suability arose originally from the  
13 fact that it was just a group of people, recognized as  
14 a church, as a congregation. You can't sue a congrega-  
15 tion because it is not a recognized legal entity.

16 MR. SIMPSON: I was going to say, why  
17 change the association aspect of a union?

18 THE COMMISSIONER: Well, because the  
19 consequences of union action are becoming of a character  
20 that has compelled certain other action to take place,  
21 that is all. The release of respect for regulation in  
22 one form and another, and the extended freedom that has  
23 fallen from it, we are getting to the point where  
24 we are between God and the devil. They are now opening  
25 up their arms and proudly pronouncing to people that they  
26 mean business -- he has got that from both sides,  
27 "We mean business". So, they all mean business.  
28 Somebody else may mean business in the course of time.  
29 It is just as well to face these actualities and try  
30 to introduce something that will bring us back to reason.





1 MR. SIMPSON: I think it may have been  
2 also felt, at one time, politically, that when you  
3 permit a combination to take place through a union,  
4 then it would be too easy to break up the combination  
5 if you make the union a suable entity; in other words,  
6 if it was a weak union, to make it a suable entity may  
7 diminish its strength a great deal. I have heard the  
8 argument put by management that unions are extremely  
9 powerful. I don't necessarily follow that reasoning  
10 because I think I read, concerning this Commission, that  
11 only 22 per cent of the labour force in Ontario was  
12 organized. That is a very small percentage. So that  
13 the trade union movement cannot be described as very  
14 strong in this province.

15 THE COMMISSIONER: But the trade unions,  
16 take in the United States, they have become not only  
17 large, but they have become capitalists, they have  
18 employees, they carry on banks, they have entered big  
19 business, they are big business. That was unheard of  
20 100 years ago.

21 MR. SIMPSON: And they also have a very  
22 effective political lobby which bears no resemblance  
23 to the situation which exists in this province.

24 MR. POLLOCK: They have a whole party  
25 here.

26 MR. SIMPSON: The trade union in the  
27 States has a very strong political force. It helps to  
28 influence decision as to whether or not a man can run  
29 for President of the United States.

30 THE COMMISSIONER: I think you are





1 exaggerating. It is hardly relevant but I remember the  
2 occasion where one of the auditors of the Taft-Hartley  
3 Act was running for the position of Senator in a labour  
4 state and he was elected in spite of that Act, by a  
5 very large majority. This was his last election. So  
6 you see, labour has not divided itself in the United  
7 States on political lines. They repudiated that. They  
8 are simply for all parties.

9 In England they have associated themselves  
10 and become a political party.

11 MR. SIMPSON: All I am saying is that  
12 they are a political force to be reckoned with and a  
13 very strong political force. I don't think that trade  
14 unions in this province have the same political base  
15 and power as they do in the United States.

16 THE COMMISSIONER: There is a much  
17 smaller population to begin with. The numbers are  
18 insignificant as compared with the United States.

19 MR. SIMPSON: I don't think numbers  
20 matter. I think, in Australia where you are going, sir,  
21 you will find a very high degree of trade unionism and  
22 yet a very small population.

23 THE COMMISSIONER: Yes, that depends  
24 largely on the origin of that. All of that, remember,  
25 arose out of a series of very serious strikes.

26 MR. SIMPSON: Yes.

27 MR. KOBRYN: I have the information on  
28 the housing costs, cost of labour per house. Selling  
29 price of a \$22 thousand home, this was dated around  
30 September the 1st, bricklayers was \$1,450, work on the







1 house, carpenters - \$706, electricians \$325, hoisting  
2 engineers \$120, labourers \$200, painters \$285, plasterers  
3 \$344.80, plumbers \$143.20 and sheetmetal workers \$250  
4 even, a total of \$3,824 labour cost on a \$22 thousand  
5 home.

6 THE COMMISSIONER: Well, we will see  
7 what some other people have to say about other towns.  
8 That is in a unionized town.

9 MR. SIMPSON: We had hoped to file with  
10 you today, a list of factual cases which illustrate the  
11 inability of the building trades unions to organize in  
12 the building trade.

13 MR. POLLOCK: Just let me ask you one  
14 final question. Are you bothered much with strike  
15 breakers and that sort of thing?

16 MR. SIMPSON: I don't think so.

17 MR. MAIN: I would not think so.

18 MR. POLLOCK: At the time when peak  
19 employment in construction is going on, everybody is  
20 generally employed?

21 MR. MAIN: Yes.

22 MR. POLLOCK: I guess when Expo finishes  
23 you might have some problems.

24 MR. SIMPSON: Well, I hope they have  
25 them in Montreal.

26 THE COMMISSIONER: Well, thank you  
27 gentlemen, very much, for your willingness to come here  
28 and talk to us as you have talked to us and we were  
29 glad to listen.

30 The Commission will be adjourned until





*Nethercut & Young*

*Toronto, Ontario*

816

1 tomorrow morning at 10:00 o'clock.

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---At 3:40 p.m., the Hearing adjourned until  
10:00 a.m., on Tuesday, the 24th of  
January, 1967.

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